



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100

Boston, MA 02109-3912

July 29, 2016

Brian P. Thompson, Director
Office of Long Island Sound Programs
Department of Energy & Environmental Protection
State of Connecticut
79 Elm Street
Hartford, CT 06106-5127

Re: EPA Region 1's Federal CZMA Consistency Determination for Proposed
Designation of the Eastern Long Island Sound Dredged Material Disposal Site

Dear Mr. Thompson:

The New England Office of the United States Environmental Protection Agency (EPA, Region I or the Region) is proposing to designate a dredged material disposal site for the eastern region of Long Island Sound pursuant to Sections 102(c) and 106(f) of the Marine Protection, Research and Sanctuaries Act (MPRSA). 33 U.S.C. §§ 1412(c) and 1416(f). *See also* 40 C.F.R. § 228.4(e). On April 27, 2016, EPA published a Proposed Rule notifying the public of this proposed action and seeking public review and comment. 81 Fed. Reg. 24748 - 244767 (April 27, 2016). EPA also simultaneously published for public review and comment a Draft Supplemental Environmental Impact Statement (DSEIS) that evaluated the proposed action and various possible alternatives to it.

EPA has determined that its proposed action would be consistent to the maximum extent practicable with the enforceable policies of Connecticut's Coastal Management Program (CT CMP). Therefore, together with this letter, EPA is submitting its consistency determination to the Connecticut Department of Energy & Environmental Protection (CT DEEP) pursuant to Section 307(c)(1)(C) of the Federal Coastal Zone Management Act (CZMA). 16 U.S.C. § 1456(c)(1)(C). EPA is also providing a Coastal Management Consistency Review Form for Federal Activities and has previously provided copies of the Proposed Rule and the DSEIS.

Specifically, EPA is proposing to designate a site offshore of New London, CT. The site is referred to as the "Eastern Long Island Sound Dredged Material Disposal Site" (ELDS). While identifying designation of the ELDS as its preferred alternative, EPA also indicated that two other alternatives, the Niantic Bay Disposal Site (NBDS) and the Cornfield Shoals Disposal Site (CSDS), or portions thereof, could also potentially be

designated in addition to, or instead of, the ELDS. EPA invited public comment on the option of designating one or both of these sites. EPA also has proposed that the same site use restrictions governing use of the Central Long Island Sound and Western Long Island Sound dredged material disposal sites also be applied to the site or sites designated in the eastern region of the Sound. *See* 81 Fed. Reg. 44220 (July 7, 2016) (Final Rule) (amended site use restrictions for the CLDS and WLDS).

On December 22, 2015, EPA sent your office a letter indicating the Region's intent to review our proposed action to determine its consistency with the CT CMP and seeking guidance regarding which of the enforceable policies of the CT CMP should be considered. On January 15, 2016, you sent a reply letter providing the requested guidance. EPA 1 appreciates your assistance.

EPA has completed its evaluation and, as stated above, has determined that its proposed action, as well as the primary alternatives under consideration, would be fully consistent with the enforceable policies of the CT CMP. The Region's determination is supported by the above-cited Federal Register notice, DSEIS and other materials referenced in the consistency determination.

The waters of Long Island Sound are precious natural resources that provide immeasurable benefits to the people of our Nation, including residents of the States of Connecticut and New York. These waters also provide invaluable habitat for aquatic life, a wonderful aesthetic and recreational resource, and a crucial engine for the region's economy. Maintaining the navigability of these waters is also important to our national security planning. All of these purposes and functions must be served in our collective stewardship of Long Island Sound. As the CT CMP recognizes, dredging is needed at times to ensure safe navigation and adequate mooring space for recreational, commercial and military vessels. At the same time, it is critical that dredging and dredged material management be conducted in an environmentally sound manner. EPA Region 1 believes that its proposed action correctly balances this multitude of interests.

In developing this proposal, EPA has taken into account the input of the CT DEEP, other federal and state agencies, and members of the interested public. We look forward to receiving and considering public comments on the Proposed Rule and the DSEIS. When considering the proposed action, it is important to remember that EPA designation of a disposal site does not authorize either any dredging or the placement of any particular dredged material at the designated disposal site. It just makes the designated site available as a potential management option for use in appropriate circumstances. Any proposal to place dredged material at a site in the waters of Long Island Sound will be subject to a case-specific permitting review. Placement at a disposal site can only be authorized if (a) the sediments are analyzed and found suitable for marine disposal after physical, chemical and biological testing, and (b) there are no practicable alternatives to such marine disposal.

EPA Region 1 requests that CT DEEP provide a written concurrence with the attached CZMA consistency determination within 60 days of receipt of this letter.

If you have any questions regarding this letter, your staff may call Mel Cote, chief of the Surface Water Branch at (617) 918-1553 and/or your legal counsel may call Senior Assistant Regional Counsel Mark Stein at (617) 918-1077. Thank you for your continued cooperation in this important effort.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Moraff', with a stylized flourish extending to the right.

Kenneth Moraff, Director
Office of Ecosystem Protection

Enclosure

cc (by email):

David Kaiser, NOAA

Mark Habel, USACE

Kathleen Moser, NY DEC

Jeffrey Zappieri, NY DOS

Grover Fugate, RI CRMC



**Connecticut Department of
Energy & Environmental Protection**
Bureau of Water Protection & Land Reuse
Office of Long Island Sound Programs

Coastal Management Consistency Review Form for Federal Activities

Use of this form, although not mandatory, will facilitate coastal consistency review analysis by the Federal agency and result in submission of sufficient information for comprehensive review by the Department of Energy and Environmental Protection (DEEP) Office of Long Island Sound Programs (OLISP). It is anticipated that submittal of a completed form with indicated supplemental materials will, in most instances, eliminate the need for further information. The form should be used in conjunction with the *Reference Guide to Coastal Policies and Definitions* (DEEP-OLISP-GUID-200). The *Instructions and Guidance for Completing the Federal Coastal Consistency Review Form for Federal Activities* (DEEP-OLISP-INST-300) explains how to complete this form and provides several critical definitions and pertinent guidance. Once completed, please submit this form with the appropriate supporting documentation to: CT DEEP-OLISP, 79 Elm Street, Hartford, CT 06106-5127. For further information or assistance in completing this form, please contact us at the address above or by phone at 860-424-3034.

Part I: Federal Agency and Contact Identification

Agency Name: **United States Environmental Protection Agency, Region 1**

Mailing Address: **5 Post Office Square, Suite 100**

City/Town: **Boston**

State: **MA**

Zip Code: **02109-3912**

Business Phone: **617-918-1536**

ext.

Fax: **617-918-0036**

Agency Contact: **Ms. Jean Brochi**

Title: **Biologist**

E-Mail: **brochi.jean@epa.gov**

Identification of Primary Contact for correspondence if other than Agency Contact noted above:

Company Name:

Mailing Address:

City/Town:

State:

Zip Code:

Business Phone:

ext.

Fax:

Contact Person:

Title:

E-Mail:

Part II: Review Type and Project Title

Type of Review (check one):

☐ Federal Development Project

☐ Negative Determination

☒ Other Federal agency activity (specify general type): **Designation of ocean disposal site for dredged material.**

Project Title or Other Identification:

Proposed designation of one or more ocean disposal sites for dredged material in the eastern region of Long Island Sound.

Office of Long Island Sound Programs
Division of Environmental Protection
Department of Environmental Conservation



Coastal Management Consistency Review Form for Federal Activities

This form is to be completed by the applicant for a federal activity that may affect the coastal environment. It is designed to ensure that the activity is consistent with the coastal management plan for the area. The form should be completed by the applicant and submitted to the appropriate federal agency for review. The form should be completed by the applicant and submitted to the appropriate federal agency for review. The form should be completed by the applicant and submitted to the appropriate federal agency for review.

Federal Agency and Contact Information

Name of Federal Agency: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone: _____

Fax: _____

E-mail: _____

Website: _____

Other: _____

Comments: _____

Review Type and Project Title

Project Title: _____

Review Type: _____

Comments: _____

Part III: Other DEEP Involvement with the Project

Is any component of this activity directly regulated by DEEP separate from the Federal Coastal Consistency Process (e.g., 401 Water Quality Certification)? ☐ Yes ☒ No

If yes, list below all DEEP permits, certifications, or other authorizations being pursued for this activity, and describe the regulated activity/ies:

☐ Check if additional sheets are attached to this page

Has any other unit of the DEEP been contacted regarding this activity? ☐ Yes ☒ No

If yes, please identify other Departmental contacts:

☐ Check if additional sheets are attached to this page

Part IV: Detailed Project Information

1. Description of Proposed Activity

Describe the proposed federal activity including its purpose and all related actions. For site-specific activities, such actions might include: site clearing, grading, demolition, and other site preparations; percentage of increase or decrease in impervious cover from existing conditions resulting from the activity; phasing, timing, and method of proposed construction; and new uses and changes from existing uses. For site-specific activities proposed at waterfront sites, provide detailed information regarding any water-dependent uses proposed. For non-site specific activities, include a complete description of the proposed activity and its purpose.

EPA is proposing to designate one or more marine disposal sites for dredged material in the eastern region of Long Island Sound. As described in a Federal Register Notice and a Draft Supplemental Environmental Impact Statement, EPA proposed designation of the Eastern Long Island Sound Disposal Site (ELDS) offshore of New London, CT. (EPA previously provided these records to CT DEEP.) EPA has also considered possible designation of alternative areas referred to as the Niantic Bay Disposal Site (NBDS) and/or the Cornfield Shoals Disposal Site (CSDS), respectively. While not proposing to designate the NBDS or CSDS at this time, EPA has requested comments that address these options. The site or sites would be designated pursuant to 33 U.S.C. 1412(c) and 1416(f), and 40 C.F.R. 228.4(e). Existing EPA regulations restrict use of these sites so that, among other things, placement of dredged material at the sites is prohibited unless the material satisfies EPA's sediment quality criteria, see 40 C.F.R. Part 227, Subpart B, and unless there is no practicable alternative to such marine placement of the material. See 40 C.F.R. Part 227, Subpart B; 40 C.F.R. 227.16(b). EPA also proposes to apply the same site use restrictions to the eastern Long Island Sound site (or sites) as are used for the Central and Western Long Island Sound Disposal Sites. See 40 C.F.R. 228.15(b)(4) and (b)(5). Designating a site in the eastern region of Long Island Sound will make available an open-water disposal site as an to provide an option for dredged material management when other options are not practicable and available. Ultimately, the overarching purpose of the site use restrictions is to reduce or eliminate the disposal of dredged material into Long Island Sound wherever practicable. (Together with this Form, EPA has also provided CT DEEP with a separate Determination of Consistency with the CT CMP.)

☒ Check if additional sheets are attached to this page

Part IV: Detailed Project Information (cont.)

2. Is the Project Site-Specific?

- ☒ Yes Please continue with Part IV and fill out all subsequent parts of the form.
☐ No Skip to Part V: Identification of Applicable Enforceable Policies

3. Location Information

a. Project Address, Location, or Affected Area: **Waters in the eastern region of Long Island Sound**

City/Town:

State: **CT**

Zip Code:

b. Agency's interest in property, if any:

- ☐ fee simple ☐ option ☐ lessee ☐ easement ☒ not applicable
☐ other (specify):

c. Is the activity proposed at a waterfront site (includes tidal wetlands frontage) or within coastal, tidal or navigable waters? ☒ Yes ☐ No

If yes, name the affected coastal, tidal or navigable waters:

Long Island Sound

d. If off-site effects on coastal uses and/or resources are anticipated, identify the address or location(s) of such effects and attach a map (8 1/2" x 11" format) indicating this area:

No direct effects. Only insignificant indirect effects are anticipated at the disposal sites themselves, and possibly at dredging sites or along transit routes from dredging sites to the disposal sites. The proposed disposal site is the ELDS, with the NBDS and CSDS being considered as potential site alternatives instead of, or in addition to, the ELDS. The location of each of the three sites is specified at 81 Fed. Reg. 24751-24753 (April 27, 2016). The affected natural resources are discussed and depicted on a map in EPA's Federal Register notice for the Proposed Rule and the DSEIS.

- ☒ Check if additional sheets are attached to this page
☐ Check here to indicate map is enclosed.

e. If the Federal project is site specific, identify and describe the existing land use on and adjacent to the site of the proposed activity and any anticipated location(s) of off-site effects on coastal resources or uses. Clearly differentiate between the descriptions of on-site and off-site areas. Include any existing structures and significant features at either location.

Any on-site effects would happen at the ELDS (or the NBDS or CSDS, if designated). The location of the sites is identified above. Any off-site effects would be at yet-to-be specified dredging sites and along transit routes from the dredging sites to the disposal sites.

- ☒ Check if additional sheets are attached to this page

f. Indicate the area of the project site: **The ELDS is 2 square nautical miles in area.** ☐ acres or ☐ square feet

g. Indicate the area of any anticipated off-site effects: **N/A**

- ☐ acres or ☐ square feet or ☐ other units (specify units):

Part IV: Detailed Project Information (cont.)

4. Project Plans

If the proposed Federal activity is a "Federal Development Project", or other site specific activity, please provide project plans in 8 1/2" x 11" format that clearly and accurately depict the following items, and check the appropriate boxes to indicate that the information is included in this review package:

- ☒ Project location
- ☒ Existing and proposed conditions, including buildings and grading
- ☒ Coastal resources on and contiguous to the site
- ☒ High Tide Line [as defined in CGS § 22a-359(c)], Mean High Water, and Mean Low Water elevations and contours (for parcels abutting coastal waters and/or tidal wetlands only)
- ☐ Soil erosion and sediment controls
- ☐ Stormwater management measures
- ☒ Ownership and type of use on adjacent properties
- ☒ Reference datum (i.e., National Geodetic Vertical Datum, Mean Sea Level, etc.)

If a Spill Prevention, Control, and Containment Plan (SPCC) has been developed for this site, please provide a copy in the review package and check here to indicate its inclusion ☐

Part V: Identification of the Applicable Enforceable Policies

In this Part, there are four tables which should be completed by checking the appropriate boxes in each. Table 1: *Coastal Resources and Associated Enforceable Policies*, is to identify on-site, adjacent, and/or potentially affected State-statutorily defined coastal resources. Table 2: *Coastal Uses and Associated Enforceable Policies*, is to identify existing and proposed State-statutorily defined coastal uses potentially affected by the project. Table 3a: *Potential Adverse Impacts on Coastal Resources* and Table 3b: *Potential Adverse Impacts on Water-dependent Uses and Opportunities* is to identify State-statutorily-defined adverse impacts.

Table 1

Coastal Resources and Associated Enforceable Policies	On-site	Adjacent	Affected by the proposed Federal activity**
General Coastal Resources* - Definition: CGS § 22a-93(7) Policy: CGS § 22a-92(a)(2)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Beaches & Dunes - Definition: CGS § 22a-93(7)(C) Policies: CGS §§ 22a-92(b)(2)(C) and 22a-92(c)(1)(K)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bluffs & Escarpments - Definition: CGS § 22a-93(7)(A) Policy: CGS § 22a-92(b)(2)(A)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coastal Hazard Area - Definition: CGS § 22a-93(7)(H); Policies: CGS §§ 22a-92(a)(2), 22a-92(a)(5), 22a-92(b)(2)(F), 22a-92(b)(2)(J), 22a-92(c)(1)(K), and 22a-92(c)(2)(B)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coastal Waters, Estuarine Embayments, Nearshore Waters, Offshore Waters - Definitions: CGS §§ 22a-93(5), 22a-93(7)(G), 22a-93(7)(K), and 22a-93(7)(L); Policies: CGS §§ 22a-92(a)(2) and 22a-92(c)(2)(A)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Developed Shorefront - Definition: CGS § 22a-93(7)(I); Policy: CGS § 22a-92(b)(2)(G)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Freshwater Wetlands and Watercourses - Definition: CGS § 22a-93(7)(F) Policy: CGS § 22a-92(a)(2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Intertidal Flats - Definition: CGS § 22a-93(7)(D) Policies: CGS § 22a-92(b)(2)(D) and 22a-92(c)(1)(K)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Islands - Definition: CGS § 22a-93(7)(J) Policy: CGS § 22a-92(b)(2)(H)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rocky Shorefront - Definition: CGS § 22a-93(7)(B) Policy: CGS § 22a-92(b)(2)(B)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shellfish Concentration Areas - Definition: CGS § 22a-93(7)(N) Policy: CGS § 22a-92(c)(1)(I)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shorelands - Definition: CGS § 22a-93(7)(M) Policy: CGS § 22a-92(b)(2)(I)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tidal Wetlands - Definition: CGS § 22a-93(7)(E) Policies: CGS §§ 22a-92(a)(2), 22a-92(b)(2)(E), and 22a-92(c)(1)(B)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* The General Coastal Resource Policy is applicable to all proposed activities within Connecticut's coastal boundary and coastal area.

** The coastal resources affected by the project can be on-site, adjacent, or further removed from the project site.

Table 2

Coastal Uses and Associated Enforceable Policies	
<input checked="" type="checkbox"/>	General Development* - CGS §§ 22a-92(a)(1), 22a-92(a)(4), and 22a-92(a)(9)
<input checked="" type="checkbox"/>	Boating - CGS § 22a-92(b)(1)(G), 22a-92(b)(1)(H), and 22a-92(b)(1)(I)
<input checked="" type="checkbox"/>	Coastal Recreation and Access - CGS §§ 22a-92(a)(2), 22a-92(a)(6), 22a-92(c)(1)(J), and 22a-92(c)(1)(K)
<input type="checkbox"/>	Coastal Structures and Filling - CGS § 22a-92(a)(2), 22a-92(b)(1)(D), 22a-92(c)(1)(B), 22a-92(c)(1)(K), and 22a-92(c)(2)(B)
<input type="checkbox"/>	Cultural Resources – CGS § 22a-92(b)(1)(J)
<input type="checkbox"/>	Dams, Dikes and Reservoirs - CGS § 22a-92(a)(2)
<input checked="" type="checkbox"/>	Dredging and Navigation - CGS §§ 22a-92(a)(2), 22a-92(c)(1)(C), 22a-92(c)(1)(D), and 22a-92(c)(1)(E)
<input type="checkbox"/>	Energy Facilities - CGS §§ 16-50g and 16-50p(a)
<input checked="" type="checkbox"/>	Fisheries - CGS § 22a-92(c)(1)(I)
<input type="checkbox"/>	Flooding and Erosion - CGS § 22a-92(a)(5)
<input type="checkbox"/>	Fuel, Chemicals and Hazardous Materials - CGS §§ 22a-92(a)(2), 22a-92(b)(1)(C), 22a-92(b)(1)(E) and 22a-92(c)(1)(A)
<input checked="" type="checkbox"/>	Facilities and Resources which are in the National Interest - Definition CGS § 22a-93(14) - Policy CGS 22a-92(a)(10)
<input checked="" type="checkbox"/>	Intergovernmental Coordination - CGS § 22a-92(a)(9)
<input type="checkbox"/>	Open Space and Agricultural Lands - CGS § 22a-92(a)(2)
<input checked="" type="checkbox"/>	Ports and Harbors – CGS § 22a-92(b)(1)(C)
<input type="checkbox"/>	Sewer and Water Lines - CGS § 22a-92(b)(1)(B)
<input type="checkbox"/>	Solid Waste - CGS § 22a-92(a)(2)
<input checked="" type="checkbox"/>	Transportation - CGS §§ 22a-92(b)(1)(F), 22a-92(c)(1)(F), 22a-92(c)(1)(G), and 22a-92(c)(1)(H)
<input checked="" type="checkbox"/>	Water-dependent Uses** - Definition CGS § 22a-93(16) - Policies CGS §§ 22a-92(a)(3) and 22a-92(b)(1)(A)

* The General Development Policy is applicable to all proposed activities within Connecticut's coastal boundary and coastal area.

** The Water-Dependent Uses Policies are applicable to all activities proposed at waterfront sites, including those sites with only tidal wetlands frontage.

Identification of State Statutorily Defined Potential Adverse Impacts

In Tables 3a and 3b, identify the adverse impact categories that apply to the proposed Federal activity. The "Applicable" column **must be checked** if the proposed activity has the **potential** to generate any of the State-statutorily defined adverse impacts, even if the activity is designed to avoid such impacts. Also indicate, by checking the appropriate boxes, whether the potential adverse impacts have been avoided or minimized and whether any resource compensation is proposed.

Table 3a

Potential Adverse Impacts on Coastal Resources	Applicable	Impacts Are Avoided	Impacts Are Minimized	Compensation Is Proposed	Not Applicable
Characteristics and Functions of Resources - CGS § 22a-93(15)(H)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coastal Flooding - CGS § 22a-93(15)(E)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Coastal Waters Circulation Patterns - CGS § 22a-93(15)(B)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Drainage Patterns - CGS § 22a-93(15)(D)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Patterns of Shoreline Erosion and Accretion - CGS § 22a-93(15)(C)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Visual Quality - CGS § 22a-93(15)(F)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Water Quality - CGS § 22a-93(15)(A)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wildlife, Finfish, Shellfish Habitat - CGS § 22a-93(15)(G)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Table 3b

Potential Adverse Impacts on Water-dependent Uses and Opportunities	Applicable	Impacts Are Avoided	Impacts Are Minimized	Compensation Is Proposed	Not Applicable
Locating a non-water-dependent use at a site physically suited for, or planned for location of, a water-dependent use - CGS § 22a-93(17)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Replacing an existing water-dependent use with a non-water-dependent use - CGS § 22a-93(17)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Siting a non-water-dependent use which would substantially reduce or inhibit existing public access to marine or tidal waters - CGS § 22a-93(17)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Part VI: Consistency Analysis

Explain how the proposed activity is consistent with all of the applicable enforceable policies identified in Part V, why any remaining adverse impacts resulting from the proposed activity or use have not been mitigated, and why the project as proposed is consistent with the enforceable policies of Connecticut's Coastal Management Program. If an adverse impact **may** result from the proposed Federal activity, describe what project design features may be used to eliminate, minimize, or mitigate the potential for adverse impacts. For proposed Federal Development Projects, please describe the stormwater best management practices that will be utilized. Such systems should be designed to meet the guidance provided in the accompanying instructions.

EPA's consistency analysis is spelled out in a separate Federal Consistency Determination which has been submitted to CT DEEP together with this form.

☒ Check if additional sheets are attached to this page

Part VII: Level of Consistency and Identification of Legal Authority that Prohibits Full Consistency, if Applicable

Federal regulations allow Federal activities to be less than fully consistent with a State's enforceable policies **only** if "full consistency is prohibited by existing law applicable to the Federal Agency" [15 CFR 930.32]. Please check the appropriate box below to indicate the activities degree of consistency.

☒ Project is *fully* consistent with Connecticut's enforceable policies

☐ Project is *not fully* consistent with Connecticut's enforceable policies, but is consistent to the maximum extent practicable

If the proposed Federal Activity described in this form is not *fully* consistent with Connecticut's enforceable policies, but only consistent to the maximum extent practicable, in accordance with 15 CFR 930.32, please identify and describe the statutory provisions, legislative history, or other legal authority which limits the federal agency's discretion to comply fully with Connecticut's Coastal Management Program. Please attach additional pages if necessary. Attach copies of the relevant statutory provisions, legislative history, or other legal authority cited.

☒ Check if additional sheets are attached to this page

Part VIII: Coastal Zone Management Act Consistency Statement

Note: This Part *must* be completed for all submissions

In this Statement "Federal Agency" means:

The United States Environmental Protection Agency, Region 1.

and "the project" means:

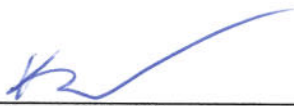
The proposed designation of an open-water dredged material disposal site for the eastern region of Long Island Sound.

This document provides the State of Connecticut Coastal Management Program with the required Consistency Determination under CZMA Section 307(c)(1) [or (2)] and 15 CFR Part 930, Subpart C, for the project described in this *Coastal Management Consistency Review Form for Federal Activities*. This determination is provided by the Federal Agency identified above. The information in this Consistency Determination is provided pursuant to 15 CFR Section 930.39. The Federal Agency has determined that the project affects the land or water uses or natural resources of Connecticut as described above. Based on the information, data, and analysis included in the *Coastal Management Consistency Review Form for Federal Activities* for the project, the Federal Agency has determined that the proposed activity is consistent to the maximum extent practicable with the enforceable policies of the Connecticut Coastal Management Program as evaluated in this form.

Pursuant to 15 CFR Section 930.41, the Connecticut Coastal Management Program has 60 days from receipt of this form in which to concur with or object to this Consistency Determination, or to request an extension under 15 CFR Section 930.41(b).

Part IX: Certifying Signatures


"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that based on reasonable investigation, including my inquiry of the individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief."


Signature of Certifier

7/29/16
Date

Ken Moreff
Name of Certifier (print or type)

Director, Office of Ecosystem Protection,
BPA Region 1
Title (if applicable)


Signature of Preparer

7/29/16
Date

Mark A. Stein
Name of Preparer (print or type)

Senior Assistant Regional Counsel
Title (if applicable)

EPA Region 1 Determination of Federal Action's Consistency with Enforceable Policies of Connecticut's Coastal Zone Management Program (July 29, 2016)

I. EPA's Proposed Action

Over time, the movement and accretion of silt and sand in the waters of Long Island Sound, and rivers tributary to the Sound, leads to the buildup of sediment on the bottom of these waters. This buildup can interfere with navigation and the berthing and docking of vessels. This, in turn, can threaten public safety and interfere with marine commerce and recreation. It can even impact national defense-related activities due to the need for adequate navigation channels and berthing areas for the U.S. Navy and Coast Guard vessels that use these waters. Therefore, it is periodically necessary to dredge Long Island Sound's navigational channels, port and docking areas, marinas, tributary rivers and other areas requiring vessel access. The need for dredging is not unique to Long Island Sound; it is a necessity for waterways all over the Nation. When dredging occurs, there is, of course, a concomitant need to manage the dredged sediments appropriately.

To help manage these dredged sediments in an environmentally sound way, the New England Office (Region 1 or the Region) of the United States Environmental Protection Agency (EPA) is proposing to designate a dredged material disposal site in the eastern region of Long Island Sound under Sections 102(c) and 106(f) of the Marine Protection, Research, and Sanctuaries Act (MPRSA). 33 U.S.C. §§ 1412(c) and 1416(f). *See also* 40 C.F.R. § 228.4(e). The proposed site would be named the Eastern Long Island Sound Disposal Site (ELDS).

On April 27, 2016, EPA Region 1 published a Proposed Rule in the Federal Register informing the public of the proposed designation of the ELDS and seeking public comment on the proposal. 81 Fed. Reg. 24748-24767 (April 27, 2016) (EPA's April 2016 Proposed Rule). EPA's April 2016 Proposed Rule also sought comment on two site designation alternatives – the Niantic Bay Disposal Site (NBDS) and the Cornfield Shoals Disposal Site (CSDS). *See* 81 Fed. Reg. 24748, 24749. On April 27, 2016, EPA also released for public review and comment a Draft Supplemental Environmental Impact Statement (DSEIS) under the National Environmental Policy Act (NEPA). The DSEIS explains EPA's proposed designation of the ELDS and describes and evaluates possible alternative courses of action, including designation of the NBDS and/or the CSDS, or pursuit of one of the so-called "no action" alternative(s). (EPA's April 2016 DSEIS).

EPA has determined that its proposed action will be consistent to the maximum extent practicable with the enforceable policies of the State of Connecticut's federally approved coastal management program (CT CMP). This determination is based on the analyses presented and referenced herein, including the analyses in the above-referenced Federal Register notice and DSEIS. Therefore, pursuant to Section 307(c)(1)(C) of the federal Coastal Zone Management Act (CZMA). 16 U.S.C. § 1456(c)(1)(C), EPA is providing this consistency determination to the Connecticut Department of Energy & Environmental Protection (CT DEEP), which administers

the state's coastal zone management program.¹

Designating the ELDS (or another site or sites) would make a dredged material disposal site available, if needed, for the management of *suitable* dredged material from the eastern region of Long Island Sound. Dredged material is only suitable for placement at a site designated by EPA under the MPRSA if it has satisfied the rigorous sediment quality criteria of EPA's regulations under the MPRSA. *See* 40 C.F.R. Part 227. Thus, even if the proposed designation of the ELDS (or another site or sites) is finalized, any specific proposal to place dredged material at the site will still have to go through a separate, case-specific review and authorization process. *See* 33 U.S.C. § 1413; 40 C.F.R. Part 227.

The proposed ELDS is not an entirely new disposal site; rather, it includes a *portion* of the existing New London Disposal Site (NLDS) and then extends westward to include another area adjacent to the NLDS. As proposed, the site is almost entirely in Connecticut waters, but a tiny portion of the southeastern corner of the site extends into New York waters. While the ELDS includes a part of the existing NLDS, site use restrictions are proposed for the ELDS that go beyond the restrictions currently applied to the NLDS. The proposed restrictions incorporate the same standards and procedures that apply to the Central and Western Long Island Sound dredged material disposal sites (CLDS and WLDS, respectively). *See* 81 Fed. Reg. 24763 – 24767 (proposed 40 C.F.R. §§ 228.15(b)(4)(vi) and 228.15(b)(6)(vi)); 81 Fed. Reg. 44220 – 44230 (July 7, 2016) (Final Rule for CLDS and WLDS). These restrictions are based on the Long Island Sound Dredged Material Management Plan (LIS DMMP) and are intended to protect the waters of Long Island Sound and strengthen the existing process for determining whether practicable alternatives to open-water disposal are available for managing dredged material. They are also intended, thereby, to help over time to reduce or eliminate open-water dredged material disposal in the Sound. EPA would expect to apply the same restrictions to any other site or sites that might be designated instead of, or in addition to, the ELDS.

Finally, while EPA is proposing to designate the ELDS, it also assessed alternative disposal sites. These alternatives are discussed in the Proposed Rule and the DSEIS and, as stated above, EPA expressly sought public comment on the NBDS and the CSDS. EPA explained that one or both of these sites could conceivably be designated together with, or instead of, the ELDS. *See* 81 Fed. Reg. 24748, 24749, 24751-24753, 24762; EPA's April 2016 Draft SEIS, pp. 5-99 to 5-101. EPA has determined that designation of one or both of these alternative sites would also be consistent with the CT CMP.

II. Background

¹ EPA has also determined that its proposed action will be consistent to the maximum extent practicable with the enforceable policies of the federally approved coastal zone management programs for the states' of New York and Rhode Island. Accordingly, EPA has also provided consistency determinations to the New York Department of State (NY DOS) and the Rhode Island Coastal Resources Management Council (RI CRMC), which, respectively, administer their state's coastal zone management programs. *See* 15 C.F.R. § 930.36(e)(1). Copies of these determinations have been, or will be, provided to CT DEEP.

1. Law Applicable to Dredged Material Disposal Site Designations

The MPRSA is the primary federal law governing EPA Region 1's proposed designation of the ELDS. MPRSA § 102(c), 33 U.S.C. § 1412(c), authorizes EPA to designate ocean disposal sites for dredged material. Such designations are subject to, among other things, the requirements of MPRSA § 102(c) and EPA regulations promulgated at 40 C.F.R. §§ 228.4, 228.5 and 228.6.

Dredged material disposal into waters *landward* of the baseline from which the territorial sea is measured (baseline) is regulated under CWA § 404, 33 U.S.C. § 1344, while the MPRSA generally only applies to disposal into waters *seaward* of the baseline – i.e., “ocean waters” under the statute. *See* 33 U.S.C. § 1402(b). The waters of Long Island Sound lie *landward* of the baseline. Despite this fact, however, both legal regimes apply to dredged material disposal in the Sound. This is because MPRSA § 106(f), 33 U.S.C. § 1416(f), specifically dictates that, in addition to other provisions of law, the requirements of the MPRSA apply to dredged material disposal in Long Island Sound from either (a) federal projects or (b) non-federal projects involving more than 25,000 cubic yards of material.² MPRSA § 106(f) makes Long Island Sound the only water body lying landward of the baseline for which dredged material disposal is subject to the MPRSA's requirements for sediment quality, sediment testing, disposal site designations, and site management and monitoring.

Under MPRSA §§ 103(a) – (e), 33 U.S.C. §§ 1413(a) – (e), each proposed project involving the ocean disposal of dredged material must be separately authorized by the U.S. Army Corps of Engineers (USACE), subject to EPA review and concurrence, as well as various other types of federal and state review (e.g., Endangered Species Act [ESA] consultation; essential fish habitat (EFH) coordination under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA); federal consistency review under the CZMA; and water quality review under Clean Water Act (CWA) § 401, 33 U.S.C. § 1341). As mentioned above, before the dredged material can be deemed “suitable” for placement at an approved site, it is subjected to a variety of testing protocols (e.g., chemistry, toxicity, and bioaccumulation) and suitability for open-water disposal is determined based on whether the material satisfies criteria related to its physical characteristics, toxicity, bioaccumulation potential, and water quality effects. *See, e.g.*, 40 C.F.R. §§ 227.5 and 227.6. Material that does not satisfy these criteria is deemed “unsuitable” for open-water disposal and cannot be placed into waters subject to the MPRSA.³

² Non-federal dredged material disposal projects involving 25,000 cubic yards of material or less are, instead, regulated under Section 404 of the Clean Water Act (CWA). *See* 40 C.F.R. § 230.2(b).

³ This prohibition is subject to the narrow waiver provision of MPRSA § 103(d), but to EPA Region 1's knowledge, this waiver process has never been used. Additional restrictions on any use of the waiver process have been applied to the CLDS and the WLDS and are proposed for the ELDS. *See* 40 C.F.R. § 228.15(b)(4)(vi)(K) (disposal of dredged materials at the sites under a waiver not allowed unless 30 days prior to requesting the waiver, the New England or New York District of the USACE provides written notice to the Governors of Connecticut and New York and the North Atlantic Division of the USACE).

In addition, dredged material cannot be authorized for open-water disposal under the MPRSA unless there is a need for such open-water disposal. This means that it must have been determined that there is no other practicable alternative for managing the dredged material that would have less adverse environmental effects or risks. *See, e.g.*, 40 C.F.R. §§ 227.1(b), 227.2(a)(1) and 227.16.

Thus, designation of a disposal site under the MPRSA does not actually authorize any specific material to be placed at the site. It only makes the site available as a possible management option for dredged material that has been determined to be suitable for open-water disposal and for which it has been determined that no environmentally preferable, practicable alternative means of managing the material is available.

Finally, MPRSA § 102(c)(3), 33 U.S.C. § 1412(c)(3), requires that EPA and the USACE develop detailed Site Management and Monitoring Plans (SMMPs) for all dredged material disposal sites designated under the statute. If monitoring or other information indicates unacceptable adverse impacts to the marine environment from use of a site, then EPA could, as appropriate, modify the conditions under which the site may be used or close the site. *See* MPRSA § 102(c)(2) and (3); 40 C.F.R. §§ 228.3(a), 228.7, 228.8, 228.11.

2. Designation of the Central and Western Long Island Sound Disposal Sites

While EPA is currently proposing to designate the ELDS as an open-water disposal site for dredged material to serve the eastern region of Long Island Sound, this proposed action is closely related to EPA's prior designation of the CLDS and WLDS disposal sites to serve the central and western regions of the Sound. While this CZMA determination supports the proposed designation of the ELDS, a detailed description of the process leading to designation of the CLDS and WLDS is provided here to help place the proposed ELDS designation in the larger context of dredged material management for all of Long Island Sound. In addition, a detailed description of the site use restrictions applicable to the CLDS and WLDS sites, and the process by which they were developed, is provided because EPA is proposing to adopt the same site use restrictions for the ELDS. To understand the restrictions, it is helpful to understand their genesis. Following this discussion of the designation of the CLDS and WLDS, EPA directly addresses the proposed designation of the ELDS.

In 2005, EPA designated the CLDS and WLDS under the MPRSA for potential use for the placement of suitable dredged material. *See* 70 Fed. Reg. 32498-32520 (June 3, 2005) (Final Rule) (EPA's 2005 Final Rule). In designating the CLDS and WLDS, EPA applied the MPRSA's site designation criteria. *See* 40 C.F.R. §§ 228.4, 228.5 and 228.6. EPA's designation of the CLDS and WLDS also satisfied the requirements of other federal laws, such as the ESA, MSFCMA, CZMA, and CWA. (The CZMA issues will be discussed in greater detail below.)

In addition, EPA evaluated whether or not to designate the CLDS and WLDS under the

requirements of the National Environmental Policy Act (NEPA).⁴ EPA published its Final Environmental Impact Statement in support of the site designations in March 2004 (2004 FEIS for CLDS and WLDS). EPA's evaluations and site designations did not address the eastern portion of Long Island Sound, noting that supplemental work would be done at a later time to consider the eastern region. *See* 70 Fed. Reg. 32509 (discussing EPA's Notice of Intent explaining its plan for addressing the different regions of the Sound).

As part of the regulatory process for the proposed site designations, EPA determined that the proposed designations would be consistent to the maximum extent practicable with the enforceable policies of Connecticut's and New York's coastal zone management programs. Although both the CLDS and WLDS are located in Connecticut waters, it was possible that designating the sites could also affect New York's coastal resources. On January 22, 2004, EPA submitted to the Connecticut Department of Environmental Protection (CT DEP) its determination that the proposed site designations would be consistent to the maximum extent practicable with the enforceable policies of the Connecticut's CMP. *See* 15 C.F.R. § 930.36(e)(1). Letter from Linda M. Murphy, EPA, to Charles H. Evans, CT DEP (Jan. 22, 2004). Connecticut concurred with EPA's determination, finding EPA's proposed action to be "fully consistent" with the enforceable policies of Connecticut's CMP. Letter from Arthur J. Rocque, Jr., CT DEP, to Linda M. Murphy, EPA (April 5, 2004).

On March 4, 2004, EPA sent its determination with regard to the NY CMP to the New York Department of State (NY DOS) (EPA's 2004 CZMA Consistency Determination).⁵ On June 3, 2004, NY DOS sent EPA a letter formally objecting to EPA's determination concerning the NY CMP (NY DOS's 2004 CZMA Consistency Objection). NY DOS argued both that EPA had provided insufficient information to support a consistency determination and that, based on the information provided, the site designations were inconsistent with the enforceable policies of the NY CMP. NY DOS also argued that EPA's proposed site designations would be inconsistent with certain requirements of the MPRSA.

EPA reviewed and considered NY DOS's 2004 CZMA Consistency Objection, but ultimately disagreed with its arguments and conclusions.⁶ EPA maintained that the site designations, as

⁴ EPA disposal site designation evaluations under the MPRSA are "functionally equivalent" to NEPA reviews and, as a result, are not as a matter of law subject to NEPA analysis requirements. Nevertheless, as a matter of policy, EPA voluntarily uses NEPA procedures when evaluating the potential designation of ocean dumping sites. *See* 63 Fed. Reg. 58045 (October 29, 1998) (Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act Documents). While EPA voluntarily uses NEPA review procedures in conducting MPRSA disposal site designation evaluations, EPA has also explained that "[t]he voluntary preparation of these documents in no way legally subjects the Agency to NEPA's requirements." 63 Fed. Reg. 58046.

⁵ In the case of Long Island Sound, the state's Long Island Sound Coastal Management Program and certain Local Waterfront Revitalization Programs were evaluated as integral parts of the state's CMP.

⁶ *See, e.g.*, Memorandum, from Mel Cote, et al., to File. "Responses to Issues Raised in New York Department of State's June 3, 2004, Letter Objecting Under the Coastal Zone Management Act to Proposed Dredged Material

proposed, were consistent to the maximum extent practicable with the enforceable policies of the NY CMP. In an effort to avoid litigation over the disagreement, however, and in recognition of the federal and state agencies' shared commitment to protecting Long Island Sound's natural resources consistent with applicable law, the interested agencies – including EPA, USACE, the National Oceanic and Atmospheric Administration (NOAA), NY DOS, the New York Department of Environmental Conservation (NY DEC), and the CT DEP⁷ – engaged in lengthy negotiations to determine whether there was a way to address NY DOS's concerns under the CZMA while allowing the dredged material disposal site designations to proceed.

In the end, the agencies agreed that EPA would complete the disposal site designations but address NY DOS's concerns by placing a number of restrictions on site use. With these restrictions included as part of the site designations, NY DOS withdrew its objection to EPA's CZMA consistency determination by letter dated May 13, 2005. Although EPA maintained that its site designations as originally proposed would have satisfied the CZMA and all other applicable laws, it nevertheless agreed to include the negotiated site use restrictions so that the designations could proceed without litigation. *See* 70 Fed. Reg. 32511.

The restrictions on use of the CLDS and WLDS were included as part of EPA's 2005 Final Rule and were spelled out in the original versions of 40 C.F.R. §§ 228.15(b)(4) and (5). 70 Fed. Reg. 32518-32520. Some of these restrictions merely reiterated certain generally applicable requirements of the MPRSA regulations (e.g., that no material may be placed at the sites unless it satisfies the sediment quality criteria of 40 C.F.R. Part 227, Subpart B). Other of the restrictions were crafted specifically for the CLDS and WLDS, but were the type of restrictions typically created for any designated ocean disposal site for dredged material (e.g., providing specific coordinates to identify the boundaries of the disposal site; only allowing placement at the site of material dredged from waters in the general vicinity of the site). Still other restrictions were adopted that were unique to the CLDS and WLDS. For example, long-term use of the sites was conditioned on, among other things, USACE's completion of a regional Dredged Material Management Plan for Long Island Sound (DMMP) that would assess regional dredging needs and sediment management options and would recommend standards and procedures for achieving the goal of reducing or eliminating dredged material disposal in the Sound. In addition, the restrictions required EPA, upon completion of the DMMP, to modify the site use restrictions consistent with the procedures and standards recommended in the DMMP for reducing or eliminating open-water disposal of dredged material in the Sound. *See* 70 Fed. Reg. 32518-32519 (June 3, 2005) (40 C.F.R. §§ 228.15(b)(4)(vi)(C) and (G)). Taken together, the site use restrictions were intended both to support the goal of reducing or eliminating the placement of

Disposal Site Designations by EPA Region I" (May 19, 2005) (EPA 2005 CZMA Responses); 70 Fed. Reg. 32511 ("EPA continues to hold the view that the site designations without the additional restrictions would still be consistent with the enforceable policies of New York's CMP."). EPA incorporates the EPA 2005 CZMA Responses herein by reference and has previously provided a copy of it to NY DOS.

⁷ CT DEP has since been renamed and reconfigured as the Connecticut Department of Energy & Environmental Protection (CT DEEP).

dredged material at sites in the waters of Long Island Sound and to ensure that when the sites are used, they are used appropriately.

The USACE was the lead agency responsible for developing the DMMP for Long Island Sound, but the USACE coordinated its effort with EPA, NOAA, agencies from New York and Connecticut, and other stakeholders. The USACE also prepared a Programmatic EIS (PEIS) under NEPA in support of the DMMP. Building off the information in EPA's 2004 site designation EIS, the DMMP developed detailed estimates of dredging and dredged material management needs, investigated and identified possible alternatives to open-water disposal for managing dredged material, and considered and identified procedures and standards for future dredged material disposal in order to reduce or eliminate the placement of dredged material at disposal sites in the waters of Long Island Sound.

On January 11, 2016, the USACE completed the final DMMP and supporting Final PEIS. This was the culmination of a lengthy public review and comment process in which public comments were taken on a draft of the DMMP and a Draft PEIS. EPA was a cooperating agency in the preparation of the PEIS for the DMMP. CT DEEP has already received copies of the DMMP and the associated draft and final PEISs, but these records can also be found online from the USACE's Long Island Sound DMMP website at: <http://www.nae.usace.army.mil/Missions/ProjectsTopics/LongIslandSoundDMMP.aspx>. The DMMP and the PEIS are a part of the information supporting this consistency determination.

Within 60 days of the DMMP's completion, EPA was required to propose amendments to the CLDS and WLDS site designation regulations to incorporate procedures and standards consistent with those recommended in the DMMP. *See* 40 C.F.R. §§ 228.15(b)(vi)(C) and (G). Accordingly, on February 10, 2016, EPA proposed amendments to the site designation regulations. 81 Fed. Reg. 7055 – 7063 (February 10, 2016) (EPA's February 2016 Proposed Rule). EPA's proposed rule is also part of the information supporting this consistency determination and is available on EPA's website at <http://www.nae.usace.army.mil/Missions/Projects-Topics/Long-Island-Sound-DMMP/>. Also on February 10, 2016, EPA Region 1 submitted to NY DOS its determination that its proposed action would be consistent to the maximum extent practicable with the enforceable policies of the NY CMP.

As per the requirements of EPA's 2005 Final Rule, EPA's February 2016 Proposed Rule proposed procedures and standards to govern use of the sites and/or practicable alternatives to the sites. In some cases, requirements from the existing regulations were retained, while in other cases new requirements were proposed. In all cases, the amendments were designed to be consistent with the recommendations of the DMMP, though in some respects they could be viewed to be stricter than the recommendations of the DMMP. (The regulations expressly allowed "stricter" amendments. *See* 40 C.F.R. § 228.15(b)(4)(vi)(C) (footnote 1)). Collectively, the proposed amendments to the regulations were developed to serve the goal of reducing or eliminating the open-water disposal of dredged material in the waters of Long Island Sound.

In response to the DMMP, on March 4, 2016, NY DOS submitted a “petition” to EPA pursuant to 40 C.F.R. §§ 228.15(b)(4)(vi)(C) and (G) arguing that the procedures and standards recommended in the DMMP were insufficient and calling on EPA to adopt different or additional ones in its final regulatory amendments. While NY DOS’s petition (at pp. 5-6) acknowledged that EPA had already proposed regulatory amendments, it did not comment on EPA’s February 2016 Proposed Rule directly. The state also stated that it reserved the right to petition EPA again if it deemed EPA’s proposed regulatory amendments inadequate.

On March 25, 2016, NY DOS submitted its comments on the February 2016 Proposed Rule to EPA.⁸ NY DOS called for revisions to the proposed amendments that would, among other things, “establish additional procedures and standards that will result in clear, staged reductions in open water disposal of dredge material over time.” EPA discussed the issues with NY DOS, as well as with USACE, CT DEEP, NY DEC and others, in an effort to determine whether the regulatory amendments could be adjusted in a manner that all parties would find acceptable.

Following these discussions, on April 25, 2016, NY DOS issued EPA a “Conditioned Concurrence” letter under the CZMA (NY DOS Conditioned Concurrence). As the NY DOS Conditioned Concurrence explained, NY DOS did not concur with EPA’s determination that its proposed regulatory amendments were, *as is*, consistent to the maximum extent practicable with New York’s CMP. NY DOS did, however, propose (at pp. 6-7) conditions that “... if accepted and included in the EPA amended rule for the CLDS and WLDS site designations, would provide for this conditional concurrence to be considered as a concurrence.” NY DOS further stated that “[i]f the conditions are not accepted and fully implemented, this conditional concurrence shall be treated as an objection.” *Id.*

The conditions specified in the NY DOS Conditioned Concurrence were consistent with the terms of the discussions among the parties. EPA then made adjustments to the regulatory amendments consistent with these conditions and based on EPA’s consideration of all the public comments submitted on the February 2016 Proposed Rule. As a result, EPA indicated that it considered the Conditioned Concurrence to be a *concurrence*. EPA issued its Final Rule on July 7, 2016 (EPA’s July 7, 2016 Final Rule). 81 Fed. Reg. 44220 – 44230 (July 7, 2016) (Final Rule). On July 18, 2016, NY DOS sent EPA a letter indicating that the requirements of the Final Rule satisfied the conditions in the NY DOS Conditioned Concurrence.

EPA’s final site designation regulations for the CLDS and WLDS, as amended, and as published in EPA’s July 2016 Final Rule, are summarized below. Again, we describe them in some detail here because EPA is proposing to apply these same restrictions to the ELDS (or any alternative site that may be designated in the eastern region of the Sound).

⁸ Including NY DOS’s comments, EPA received a total of 119 individual sets of comments on the proposed rule from federal and state agencies, municipalities, elected officials, and members of the public. The comments represented a wide range of views, some supporting the proposed amendments, others requesting revisions to them, and still others calling for a prohibition on all open-water placement of dredged material in Long Island Sound.

1. The regulations specify the location, size and depth of the designated disposal sites (*see* 81 Fed. Reg. 44229 (new 40 C.F.R. §§ 228.15(b)(4)(i) – (iii) and 228.15(b)(5)(i) – (iii)));
2. The regulations specify that the designated sites are only for the placement of dredged material (*see* 40 C.F.R. §§ 228.15(b)(4)(iv) and 228.15(b)(5)(iv)).
3. The regulations specify that, consistent with MPRSA § 106(f), the designations and restrictions for these sites apply only for material from federal projects, including USACE projects, and private projects involving more than 25,000 cubic yards of material (*see* 81 Fed. Reg. 44229 (new 40 C.F.R. §§ 228.15(b)(4)(vi) and 228.15(b)(5)(vi))).
4. The regulations limit disposal at these sites to dredged material from Long Island Sound and its vicinity (*see* 40 C.F.R. §§ 228.15(b)(4)(vi)(A) and 228.15(b)(5)(vi)).
5. The regulations specify that “the goal of these conditions is to reduce or eliminate open-water disposal of dredged material in Long Island Sound” (*see* 81 Fed. Reg. 44229 (new 40 C.F.R. §§ 228.15(b)(4)(vi) and 228.15(b)(5)(vi))).
6. The regulations specify that disposal must comply with the terms of the most recent approved SMMP for each site (*see* 40 C.F.R. §§ 228.15(b)(4)(vi)(B) and 228.15(b)(5)(vi)).
7. The regulations limit disposal to dredged material that complies with the Ocean Dumping Regulations (*e.g.*, sediment quality criteria) (*see* 81 Fed. Reg. 44229 (redesignating 40 C.F.R. § 228.15(b)(4)(vi)(J) as 228.15(b)(4)(vi)(H) and new 40 C.F.R. §§ 228.15(b)(4)(vi)(C)(3)(i) and 228.15(b)(5)(vi))).
8. The regulations prohibit disposal during specified weather conditions that would create a heightened risk of dredged material spillage during transit (*see* 81 Fed. Reg. 44229 (redesignating 40 C.F.R. §§ 228.15(b)(4)(vi)(L) as 40 C.F.R. § 228.15(b)(4)(vi)(J))).
9. The regulations prohibit disposal under a waiver of requirements by EPA under 33 U.S.C. § 1413(d) unless, among other things, the USACE first gives 30 days advanced notice to the Governors of Connecticut and New York that it will be seeking a waiver (*see* 81 Fed. Reg. 44229 (redesignating 40 C.F.R. §§ 228.15(b)(4)(vi)(K) as 40 C.F.R. § 228.15(b)(4)(vi)(I) and 228.15(b)(5)(vi))).
10. The regulations specify that they do not preclude EPA from designating other dredged material disposal sites, or amending the existing designations, as long as any such action is carried out through a separate rulemaking in accordance with applicable law. The regulations further specify that they neither restrict EPA’s authorities under the MPRSA and the implementing regulations, nor restrict EPA’s authority to amend the implementing regulations. (*See* 81 Fed. Reg. 44229 (redesignating 40 C.F.R. § 228.15(b)(4)(vi)(N) as 40 C.F.R. § 228.15(b)(4)(vi)(K))).
11. The regulations build on the Regional Dredging Team (RDT) process specified in 40 C.F.R. §§ 228.15(b)(4)(vi)(I), footnote 3 and 228.15(b)(5)(vi) of the 2005 Final Rule, and allow placement of dredged material at the designated sites only if, after full consideration of recommendations provided by the RDT, the USACE

finds (and the EPA does not object), based on a fully documented analysis (*see* 81 Fed. Reg. 44229 (40 C.F.R. § 228.15(b)(4)(vi)(C)), that for a given dredging project:

- a. There are no practicable alternatives (as defined in 40 CFR 227.16(b)) to open-water disposal in Long Island Sound, and that any available practicable alternative to open water disposal will be fully utilized for the maximum volume of dredged material practicable (*see* 81 Fed. Reg. 44229 (40 C.F.R. §§ 228.15(b)(4)(vi)(C)(1) and 228.15(b)(4)(vi));
- b. Determinations relating to practicable alternatives will recognize that any alternative to open-water disposal may add additional costs (*see* 81 Fed. Reg. 44229 (40 C.F.R. §§ 228.15(b)(4)(vi)(C)(2) and 228.15(b)(4)(vi));
- c. Disposal of dredged material at the designated sites pursuant to this paragraph (b)(4) shall not be allowed to the extent that a practicable alternative is available (*see* 81 Fed. Reg. 44229 (40 C.F.R. §§ 228.15(b)(4)(vi)(C)(2) and 228.15(b)(4)(vi)); and
- d. The following standards for different dredged material types have been appropriately considered (*see* 81 Fed. Reg. 44229 (40 C.F.R. §§ 228.15(b)(4)(vi)(C)(3)(i) – (iii) and 228.15(b)(4)(vi));

(1) *Unsuitable Materials*. As already mentioned above, open-water disposal shall be limited to dredged sediments that comply with the Ocean Dumping Regulations;

(2) *Suitable sandy material*. Suitable coarse-grained material, which generally may include up to 20 percent fines when used for direct beach placement, or up to 40 percent fines when used for nearshore bar/berm nourishment, should be used for beach or nearshore bar/berm nourishment or other beneficial use whenever practicable. If no other alternative is determined to be practicable, suitable coarse-grained material may be placed at the designated sites.

(3) *Suitable fine-grained material*. This material typically has greater than 20 to 40 percent fine content and, therefore, is not typically considered appropriate for beach or nearshore placement, but has been determined to be suitable for open-water placement by testing and analysis. Materials dredged from upper river channels in the Connecticut, Housatonic and Thames Rivers should, whenever possible, be disposed of at existing Confined Open Water sites, on-shore, or through in-river placement. Other beneficial uses such as marsh creation, should be examined and used whenever practicable. If no other alternative is determined to be practicable, suitable fine-grained material may be placed at the designated sites.

12. The regulations call for contaminant source reduction efforts to control sediment entering waterways so as to reduce the need for maintenance dredging of harbor features and facilities by reducing shoaling rates. The regulations indicate that federal, state and local agencies tasked with regulating discharges into the watershed should continue to exercise their authorities under various statutes and regulations in a continuing effort to reduce the flow of sediments into state waterways and harbors. (*See* 81 Fed. Reg. 44229 (40 C.F.R. §§ 228.15(b)(4)(vi)(D) and 228.15(b)(5)(vi))).
13. The regulations again build on the RDT process created by 40 C.F.R. §§ 228.15(b)(4)(vi)(I), footnote 3 and 228.15(b)(5)(vi) of the 2005 Final Rule. The new restrictions both continue the RDT *and* create a “Steering Committee” to work in concert with the RDT. As stated in the new regulations, the Steering Committee will:

... consist[] of high-level representatives from the states of Connecticut and New York, EPA, USACE, and, as appropriate, other federal and state agencies. The Steering Committee will provide policy-level direction to the Long Island Sound Regional Dredging Team (LIS RDT) and facilitate high-level collaboration among the agencies critical to promoting the development and use of beneficial alternatives for dredged material. State participation on the LIS RDT and Steering Committee is voluntary. The Steering Committee is charged with: establishing a baseline for the volume and percentage of dredged material being beneficially used and placed at the open-water sites; establishing a reasonable and practicable series of stepped objectives, including timeframes, to increase the percentage of beneficially used material while reducing the percentage and amount being disposed in open water, and while recognizing that the amounts of dredged material generated by the dredging program will naturally fluctuate from year to year; and developing accurate methods to track the placement of dredged material, with due consideration for annual fluctuations. The stepped objectives should incorporate an adaptive management approach while aiming for continuous improvement. When tracking progress the Steering Committee should recognize that exceptional circumstances may result in delays in meeting an

objective. Exceptional circumstances should be infrequent, irregular, and unpredictable. It is expected that each of the member agencies will commit the necessary resources to support the LIS RDT and Steering Committee's work, including the collection of data necessary to support establishing the baseline and tracking and reporting on the future disposition of dredged material. The Steering Committee may utilize the LIS RDT, as appropriate, to carry out the tasks assigned to it. The Steering Committee, with the support of the LIS RDT, will guide a concerted effort to encourage greater use of beneficial use alternatives, including piloting alternatives, identifying possible resources, and eliminating regulatory barriers, as appropriate.

81 Fed. Reg. 44229 – 44230 (40 C.F.R. § 228.15(b)(4)(vi)(E)).

14. The regulations specify with regard to the RDT (*see* 81 Fed. Reg. 44230. (40 C.F.R. §§ 228.15(b)(4)(vi)(F)(1) - (4) and 228.15(b)(5)(vi))) that:
 - a. The goal of the Long Island Sound Regional Dredging Team (LIS RDT), working in cooperation with, and support of, the Steering Committee, is to reduce or eliminate wherever practicable the open-water disposal of dredged material.
 - b. The RDT will review dredging projects and make recommendations as described in paragraph (vi)(C) above. The RDT will report to the USACE on its review of dredging projects within 30 days of receipt of project information. Project proponents should consult with the RDT early in the development of those projects, to ensure that alternatives to open-water placement are fully considered.
 - c. The RDT will also assist the Steering Committee in: establishing a baseline for the volume and percentage of dredged material being beneficially used and placed at the open water sites; establishing a reasonable and practicable series of stepped objectives, including timeframes, to increase the percentage of beneficially used material while reducing the percentage and amount being disposed in open water, recognizing that the volume of dredged material generated by the dredging program will naturally fluctuate from year to year; and developing accurate methods to track and report on the placement of dredged material, with due consideration for annual fluctuations.
 - d. The RDT will, in coordination with the Steering Committee, serve as a forum for: continuing exploration of new beneficial use alternatives to open-water disposal; matching the availability of beneficial use alternatives with dredging projects; exploring cost-sharing opportunities;

- and promoting opportunities for beneficial use of clean, parent marine sediments often generated in the development of CAD cells.
- e. The RDT will assist USACE and EPA in continuing long-term efforts to monitor dredging impacts in Long Island Sound, including supporting USACE's DAMOS (Disposal Area Monitoring System) program and related efforts to study the long-term impacts of open-water placement of dredged material.
 - f. The geographic scope of the RDT includes all of Long Island Sound and adjacent waters landward of the seaward boundary of the territorial sea (three-mile limit) or, in other words, from Throgs Neck to a line three miles seaward of the baseline across western Block Island Sound.
 - g. The RDT shall be comprised of representatives from the states of Connecticut and New York, EPA, USACE, and, as appropriate, other federal and state agencies, as appropriate. As previously noted, state participation on the RDT is voluntary.
 - h. Specific details regarding the RDT's structure (e.g., chair, committees, working groups) and process shall be determined by the RDT and may be revised as necessary to best accomplish the team's purpose.
15. The regulations provide that if the volume of open-water disposal of dredged material, as measured in 2026, has not declined or been maintained over the prior ten years, then any party may petition EPA to do a rulemaking to amend the restrictions on the use of the sites. (*See* 81 Fed. Reg. 44230 (40 C.F.R. § 228.15(b)(4)(vi)(G) and 40 C.F.R. § 228.15(b)(5)(vi))).

While the DMMP and associated PEIS identified potential alternatives to open-water disposal for some amount of dredged material from the waters of Long Island Sound, these reports make clear that the alternatives to open-water disposal (e.g., beneficial use alternatives, upland and confined in-water disposal) do not provide sufficient capacity, either individually or collectively, to handle the full amount of material expected to be dredged from the central, western and eastern regions of Long Island Sound. In light of this, and other factors, EPA decided that it should finalize the designation of the CLDS and WLDS and propose designation of the ELDS. Ultimately, decisions about whether particular dredged material can and should be disposed of at the CLDS or WLDS (or any other site), or whether there is a practicable alternative for handling it in another way (e.g., upland disposal or beneficial reuse, such as beach nourishment), will need to be made on a fact-specific, case-by-case basis taking into account both the specific dredged material and the range of available management options.

That said, the procedures and standards in the regulatory amendments are well designed to minimize the amount of material to be disposed of at the CLDS and WLDS (or any other site). Building on the requirements of the MPRSA and the legal restrictions in the regulations (e.g., prohibiting the disposal of material that does not satisfy the MPRSA sediment quality criteria or for which a practicable alternative to open-water disposal is available), and consistent with the standards and procedures recommended in the DMMP, the regulatory amendments will help promote the identification and use of alternative methods of managing dredged material.

Moreover, the new and enhanced procedures will bolster the regulatory footing for a collaborative state and federal inter-agency process geared to minimizing open-water disposal of dredged material.

III. Proposed Designation of the Eastern Long Island Sound Disposal Site (ELDS)

As stated above, Region 1 is now proposing to designate the ELDS to provide a dredged material disposal site in the eastern region of Long Island Sound under Sections 102(c) and 106(f) of the MPRSA, 33 U.S.C. §§ 1412(c) and 1416(f). *See also* 40 C.F.R. § 228.4(e). EPA's April 2016 Proposed Rule informed the public of the proposed action and invited public review and comment on it. 81 Fed. Reg. 24748-24767 (April 27, 2016). EPA simultaneously published, and sought public review and comment on, a DSEIS under the National Environmental Policy Act that explains EPA's proposed action, assesses the possible environmental effects of the proposed action, and assesses possible alternative courses of action, including "no action" alternatives or designation of other alternative sites. EPA's April 2016 DSEIS. CT DEEP has received copies of both EPA's April 2016 Proposed Rule and EPA's April 2016 DSEIS.

The newly constituted ELDS is in the eastern portion of the eastern region of Long Island Sound. The site lies south of the mouth of the Thames River, approximately halfway between Connecticut and New York. *See* 81 Fed. Reg. 24751-24752 (citing EPA's April 2016 DSEIS, Figure 3-9). The closest upland points to the ELDS are Goshen Point, Connecticut, approximately 1.2 nautical miles (nmi) (2.2 km) to the north, and Fishers Island, New York, approximately 1.4 nmi (2.6 km) to the southeast. *Id.* The dimensions of the ELDS, as proposed, would be 1 × 2 nmi, for a total area of 2 nmi². As proposed, the site is almost entirely in Connecticut waters, but a tiny portion of the southeastern corner of the site extends into New York waters. For the final site designation, EPA is planning to redraw the boundary so that the site is entirely within Connecticut waters, with the southeastern corner lying near, but not crossing, the boundary with New York waters.

As also explained above, EPA is not proposing an entirely new disposal site; rather, the proposed ELDS includes only a *portion* of the existing New London Disposal Site (NLDS). Specifically, the ELDS includes approximately the western half of the NLDS, as well as an adjacent area farther west of the NLDS boundary. The ELDS does not include the eastern half of the current NLDS. *See* EPA's April 2016 DSEIS, Fig. 5-6.

The current authorization for the NLDS expires on December 23, 2016. Therefore, unless the ELDS, or some other site in the eastern region of the Sound, is designated, as of December 23, 2016, no open-water disposal site will be available in the eastern region of the Sound, even for suitable dredged material for which there is no practicable alternative method of management available. As explained in EPA's April 2016 Proposed Rule:

[t]he NLDS ... [is an] active open-water dredged material disposal site [and] was previously selected by the USACE using their site selection authority under MPRSA 103(b), 33 U.S.C. 1413(b). The statute limits the use of USACE-selected

sites to two five-year periods, 33 U.S.C. 1413(b), but Congress extended the period of use of the NLDS by five additional years by Public Law on December 23, 2011 (Pub. L. 112-74, Title I, Sec 116).

81 Fed. Reg. 24752. Moreover, as indicated in EPA's April 2016 Proposed Rule:

EPA determined, based on the evaluation of projected dredging needs over a 30-year planning horizon and alternatives to open-water disposal conducted for the USACE's DMMP, that there are dredging and dredged material disposal/handling needs that exceed the available disposal/handling capacity in the eastern region of Long Island Sound . . .

81 Fed. Reg. 24749. More specifically, with regard to the estimated dredging needs:

...dredging in eastern Long Island Sound is projected to generate approximately 22.6 million cubic yards (mcy) of dredged material over the next 30 years, including 17.9 mcy from Connecticut ports and harbors and 4.7 mcy from ports and harbors in New York. Of the total amount of 22.6 mcy, approximately 13.5 mcy are projected to be fine-grained sediment that meets MPRSA and CWA standards for aquatic disposal (i.e., "suitable" material), and 9.1 mcy are projected to be coarse-grained sand that also meets MPRSA and CWA standards for aquatic disposal (i.e., also "suitable" material).

81 Fed. Reg. 24750. With respect to the capacity of other alternatives, EPA explained that:

[t]he combined capacity of the CLDS and WLDS is approximately 40 mcy, which is enough to handle the 27 mcy from [the central and western regions of Long Island Sound]. Those sites, however, neither have the capacity nor were intended also to meet the dredging needs of the eastern Long Island Sound region, which, as stated above, has been estimated to be approximately 22.6 mcy of suitable material (which, when added to the 27 mcy of suitable material from the central and western regions, amounts to a total of 49.6 mcy of suitable material from all of Long Island Sound). Furthermore, the distances from mouth of the Connecticut River to the CLDS and WLDS are 29.9 nmi and 58.4 nmi, respectively. Thus, both sites are outside the ZSF for the eastern Long Island Sound Region and for the reasons discussed above, neither would be a viable long-term solution for dredged material from the eastern Long Island Sound region, even if the CLDS could conceivably be used for material from the eastern Sound in an emergency situation.

81 Fed. Reg. 24750. EPA also further explained that:

[t]he DMMP also included a detailed assessment of alternatives to open-water disposal and determined that, while all the sand generated in this region should be able to be used beneficially to nourish beaches, there are not practicable alternatives to open-water disposal with sufficient capacity to handle the projected volume of fine-grained sediment.

81 Fed. Reg. 24750. In sum, based on the information in the DMMP and EPA's April 2016 DSEIS, the potential alternatives to open-water disposal that have been identified to date do not have sufficient capacity to handle the volume of dredged material predicted to be generated from the eastern region of Long Island Sound. *See* EPA's April 2016 DSEIS, pp. 2-4 to 2-8; pp. 3-6 to 3-15, 3-20, 3-35, 5-24. *See also* EPA's April 2016 Proposed Rule, 81 Fed. Reg. 24750.

Thus, not having an appropriate open-water disposal site in the eastern part of the Sound would be problematic for five primary reasons:

- necessary dredging could be blocked or delayed, potentially threatening the safety of, and otherwise hampering, recreational, commercial, and military navigation;
- the USACE might be forced to use its site selection authority to specify a new sites for shorter-term use, which could over time lead to a proliferation of disposal areas in the eastern part of Long Island Sound, which would be contrary to Congress's preference for concentrating any placement of dredged material at EPA-designated sites, as indicated by MPRSA § 103(b), 33 U.S.C. § 1413(b) (the USACE "shall, to the maximum extent feasible, utilize the recommended sites designated by the Administrator..." for dredged material disposal);
- Site Management and Monitoring Plans (SMMPs) enhance the management of disposal sites and are developed under the requirements of MPRSA § 102(c)(3), 33 U.S.C. § 1412(c)(3), for EPA-designated sites, but not for USACE -selected sites;
- relying on short-term site selections would maximize the resource demands on regulatory agencies and the public because it would necessitate undertaking site selection procedures and associated reviews under NEPA and other laws every time another site selection was needed; and
- dredged material might need to be hauled longer distances for placement at open-water sites outside the eastern region of the Sound, which would be more costly, use more energy, generate greater air emissions from dredged material transportation vessels, and generally increase the risk of vessel accidents due to the greater distances being travelled. *See* 81 Fed. Reg. 24749 (detailing distances from Saybrook Outer Bars at the mouth of the Connecticut River to the nearest designated dredged material disposal sites in other parts of Long Island Sound); EPA's April 2016 DSEIS, p. 5-18.

Designation of the ELDS (or an alternative site) by EPA would provide an open-water disposal option in the eastern region of Long Island Sound to address these concerns. Designation of a disposal site would not, however, by itself authorize disposal of any particular dredged material at the site. Designation would only make the site available to receive the dredged material *if* no environmentally preferable, practicable alternative for managing the material is available, and *if* the sediments are analyzed and found suitable for open-water disposal. *See* 40 CFR 227.1(b), 227.2 and 227.3; 40 CFR part 227, subparts B and C.

As discussed in both EPA's April 2016 DSEIS and EPA's April 2016 Proposed Rule, Region 1

considered a variety of alternatives before deciding to propose designation of the ELDS. First, EPA considered a number of variations on the “No Action Alternative.” These alternatives involved various scenarios that could unfold if no site is designated in the eastern region of Long Island Sound. For example, EPA considered a scenario under which no site is authorized in the eastern portion of the Sound and beneficial use and upland disposal options have to be relied upon exclusively. As previously discussed, because these options do not provide sufficient capacity, some amount of needed dredging would have to be cancelled or delayed under this scenario. Alternatively, in the absence of an EPA site designation, sites could potentially be authorized under the USACE’s site selection authority, but this would lead to the problems mentioned above, including the potential proliferation of disposal sites. EPA also considered relying on existing designated sites outside of the eastern region of the Sound, but this would contribute to prematurely using up capacity at those sites and would increase costs, vessel air emissions and the risk of vessel accidents.

Finally, EPA also evaluated the possibility of designating open-water sites in the eastern region of the Sound other than, or in addition to, the ELDS. For example, EPA assessed the NBDS and the CSDS. After evaluating all these options, EPA decided that designating the ELDS was its preferred option. *See* EPA’s April 2016 DSES, Chapters 3 – 5. At the same time, EPA also affirmatively sought public comment on the options of designating the NBDS instead of the ELDS, or designating the CSDS and/or NBDS as a complement to the ELDS.

EPA’s proposed rule applies to the ELDS the same site use restrictions already applied to the CLDS and WLDS. 81 Fed. Reg. 44220-44230. These restrictions incorporate standards and procedures based on the LIS DMMP and are intended to strengthen the existing process for identifying and promoting the development of practicable alternatives to open-water disposal for managing dredged material. As a result, over time, these standards and procedures are intended to reduce or eliminate open-water dredged material disposal in the Sound. These standards and procedures are described in detail farther above in the discussion about the designation of the CLDS and WLDS. *See* 81 Fed. Reg. 44220-44230 (40 C.F.R. §§ 228.15(b)(4) and (5)).

IV. Applicability of the CZMA to Designation of the ELDS (and/or Other Sites in Eastern Long Island Sound)

1. Generally

Section 307(c)(1)(A) of the CZMA provides that:

[e]ach Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

16 U.S.C. § 1456(c)(1)(A). In addition, CZMA § 307(c)(1)(C) provides that:

[e]ach Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 1455(d)(6) of this title at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.

16 U.S.C. § 1456(c)(1)(C). Thus, CZMA § 307(c) dictates that when a federal agency activity will affect any land or water use or natural resource of a state's coastal zone, whether the activity is conducted within or outside that coastal zone, the federal agency must send the relevant state(s) a determination that the activity will be carried out "in a manner which is consistent to the maximum extent practicable with the enforceable policies of [relevant] approved State [coastal zone] management programs." *Id.*

NOAA regulations under the CZMA state that:

[t]he term "effect on any coastal use or resource" means any reasonably foreseeable effect on any coastal use or resource resulting from a Federal agency activity or federal license or permit activity Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

15 C.F.R. § 930.11(g). In addition, the NOAA regulations explain that:

[t]he term "enforceable policy" means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone," 16 U.S.C. § 1453(6a), and which are incorporated in a management program as approved by OCRM either as part of program approval or as a program change under 15 CFR part 923, subpart H. An enforceable policy shall contain standards of sufficient specificity to guide public and private uses. Enforceable policies need not establish detailed criteria such that a proponent of an activity could determine the consistency of an activity without interaction with the State agency. State agencies may identify management measures which are based on enforceable policies, and, if implemented, would allow the activity to be conducted consistent with the enforceable policies of the program. A State agency, however, must base its objection on enforceable policies.

15 C.F.R. § 930.11(h). Finally, NOAA's regulations also indicate that the federal agency "should give consideration to management program provisions which are in the nature of recommendations" (as opposed to enforceable policies).

EPA dredged material disposal site designations under MPRSA § 102 are federal agency activities, *see* 15 C.F.R. § 930.31(a), which could potentially affect the natural resources and/or land or water uses of a state's coastal zone under the terms of CZMA § 307(c)(1)(A) and (C), 16 U.S.C. § 1456(c)(1)(A) and (C). *See also* 15 C.F.R. § 930.11(g). As discussed farther below and in EPA's April 2016 Draft SEIS and April 2016 Proposed Rule, EPA evaluated the potential for effects on water quality, benthic habitat, and aquatic organisms from placing dredged material at the open-water disposal site alternatives under consideration, both during a disposal event and thereafter. In addition, EPA evaluated the effects that placing material at the sites could have on uses of coastal zone resources (e.g., possible interference with navigation and/or fishing). EPA considered not only the alternative disposal sites, but also, in a general sense, sites where dredging might occur and transit routes from those sites to the disposal sites.

2. *Direct and Indirect Effects of Disposal Site Designation*

a. *No Direct Effects*

Designating the ELDS (or the NBDS or CSDS) would have no *direct* effects on any resource or use of the coastal zones of Connecticut, New York or Rhode Island. This is because EPA designation of a dredged material disposal site does not actually authorize the placement of dredged material at the site. *See* 15 C.F.R. § 930.11(g) ("direct effects ... result from the activity and occur at the same time and place as the activity ..."). Designation only makes the site *potentially* available to receive dredged material. No material may be placed at the site unless such placement is first specifically authorized by the USACE. Such authorization, in turn, cannot be granted until the material has been assessed and found to satisfy the strict sediment quality criteria of the MPRSA regulations and it has been determined that no practicable alternative to open water disposal is available that would have less adverse environmental effects. *See* 40 C.F.R. §§ 227.1(b), 227.5, 227.6, 227.16(b).

b. *Possible Indirect Effects*

Indirect Effects at the Disposal Site(s)

Designating the ELDS (or NBDS or CSDS) would have *indirect* effects on the coastal zone of Connecticut, and also could potentially have indirect effects on the coastal zones of New York and Rhode Island. As explained above, "indirect (cumulative and secondary) effects ... [are effects that] result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable." 15 C.F.R. § 930.11(g). Designation of the ELDS or another alternative could result in indirect effects *at the disposal sites* because it is "reasonably foreseeable" that once a site has been designated, later federal actions will approve placement at

the site of at least some sediment dredged from the waters of both states.⁹ Placing material at the site will have some type of environmental effect as material travels through the water column and lands on the seafloor. (These environmental effects are discussed in more detail farther below.) Because the sites are located in Connecticut waters, these indirect effects would occur in Connecticut's coastal zone.

This is not to say that there would be no effects on the waters of Long Island Sound related to dredged material management without designation of the ELDS (or CSDS or NBDS). Even in the absence of a site designation, the need for dredging and dredged material management could necessitate the USACE's selection of other sites, such as the NBDS, in the eastern region of the Sound. *See* 33 U.S.C. § 1413(b); 40 C.F.R. § 228.15(b)(4)(vi)(N). This could lead to indirect effects at a proliferation of disposal sites used for a shorter period of time, which would be contrary to "EPA's policy view that it is generally environmentally preferable to concentrate any open-water disposal at sites that have been used historically and at fewer sites, *see* 40 CFR 228.5(e)" 81 Fed. Reg. 24753 (April 27, 2016). Alternatively, if no alternative site is selected or designated in the eastern region of the Sound, then either necessary dredging would be blocked or dredged material would have to be hauled to more distant disposal sites.¹⁰ In the former case, navigational safety and marine commerce and recreation would suffer. In the latter case, greater haul distances would have greater adverse environmental and economic effects, such as increased fuel use, increased air emissions, greater risk of accidents, and greater project costs.

While designating the ELDS (or NBDS or CSDS) would have indirect effects at the disposal site(s), EPA does not ultimately believe that these effects would be significant. There is no way to know in advance the amount or precise characteristics of any dredged material that might be placed at a designated site, but material can only be authorized for placement at a designated site if it is first tested and found to satisfy the MPRSA's strict sediment quality criteria in 40 C.F.R. Part 227, Subpart B.¹¹ These criteria prohibit, among other things, the placement of toxic or bioaccumulative material at a designated site. *See* 40 C.F.R. §§ 227.3, 227.5 and 227.6. In addition, any dredged material placed at a designated site would travel rapidly to the seafloor and

⁹ Such future disposal is reasonably foreseeable in light of the DMMP's projections that alternatives to open-water disposal cannot accommodate all the dredged material that will need to be managed over the next 30 years.

¹⁰ EPA does not assume that all needed dredging will be able to go forward without an available open-water disposal site. Rather, EPA concludes that without an open-water disposal site in the eastern region of Long Island Sound, some needed dredging will *not* be able to proceed. This is because both the DMMP and EPA's analysis for this rulemaking conclude based on current information that other methods of dredged material management (*e.g.*, beneficial use, upland disposal, or confined in-water disposal facilities) have insufficient capacity to handle the material from all needed dredging projects over the next 20-30 years. *See* 81 Fed. Reg. 24750. At the same time, EPA recognizes that even without an open-water site, some dredging would proceed because the dredged material would be able to be managed using practicable alternatives to open-water placement (*e.g.*, using dredged sand for beach nourishment).

¹¹ In addition, material cannot be authorized for placement at a designated site unless there are no practicable alternative management methods available that would have less adverse environmental effects.

would not disperse horizontally through the water and away from the site. *See* 81 Fed. Reg. 24754, 24758. Data also indicates that placing dredged material at one of the disposal sites would not adversely affect water quality other than temporarily raising water column turbidity in the area of the disposal site during initial mixing.

The dredged material placed at a designated site would also have only minor effects on the benthic habitat within the disposal sites because, as stated above, any such material will have had to satisfy EPA's sediment quality criteria from 40 C.F.R. Part 227, Subpart B. Moreover, although placing the material at a site would affect the seafloor and smother some benthic organisms, research shows that areas receiving dredged material are quickly recolonized by resident benthic organisms. As discussed in the USACE's PEIS in support of the DMMP, which cites Germano et al, 2011, "although short-term impacts and long-term changes in habitat due to sediment type and elevation of the seafloor have occurred [at the disposal sites], there is no evidence of long-term effects on benthic processes or habitat conditions." In addition, environmental effects would not be significant because the disposal sites do not encompass natural resource areas of particularly heightened sensitivity. *See* 81 Fed. Reg. 24754 – 24755. Placement of dredged material at the sites also would not have significant adverse effects on aquatic organisms transiting the sites because of the restrictions on the type of material that could be placed there and the limited exposures that would occur. Any effects of dredged material disposal would be further limited by the fact that placement of material at the sites could only occur during the limited months when dredging is allowed (typically only from October to April). *See* 81 Fed. Reg. 24754, 24756 (discussing "environmental windows" or "time-of-year restrictions" for dredging).

EPA has indicated that the ELDS and part of the NBDS are containment sites. This means that material placed at these sites will remain there. Containment sites keep any impacts of disposal focused in one area and are optimal for site management and monitoring by EPA and the USACE. The CSDS and the other part of the NBDS, however, are dispersive sites. Bottom currents would tend to move material placed in these dispersive areas away from the sites to the west. This is the primary reason that EPA did not propose designating the CSDS or NBDS at this time. That said, EPA has explained that due to the dispersive character of the CSDS, the USACE, EPA and Connecticut have in the past limited what could be placed at the CSDS to materials which would not be a problem if they were dispersed (e.g., clean sand). Past research has not shown any adverse effects from use of the CSDS. If EPA was to designate the CSDS and/or the dispersive area of the NBDS, it would expect to place similar restrictions on the use of these sites. In light of the above considerations, EPA would not expect significant adverse effects from using these sites. *See* 81 Fed. Reg. 24755 - 24756. At present, EPA is only proposing to designate the ELDS, but has specifically requested public comment on the NBDS and CSDS.

Designation of a disposal site would also likely have indirect effects on coastal uses because use of the water over the disposal site, for activities such as boating or fishing, would be precluded while dredged material is being placed at the site. Any such effects would be insignificant, however, for several reasons. With regard to the ELDS, EPA received comments from the Navy and others urging that the site's eastern boundary be moved to the west to avoid overlap with a

shipping channel. EPA plans to make that adjustment to the ELDS to avoid any conflicts, noting that the change will not significantly reduce site capacity. Beyond that, the disposal sites occupy only a small area within Long Island Sound and boaters and fishers could easily use and enjoy other areas when necessary. Second, not only would any interference with other uses of the waters near a disposal site only be temporary and episodic, but even this limited potential interference would only occur from October through April due to the use of “environmental windows” that restrict dredging activities to certain times of the year. As a result, any conflicts would be avoided during the busy summer boating season. Third, with the ELDS boundary change noted above, the sites would not cause major effects on navigation because neither the ELDS, CSDS, nor NBDS would be located in major shipping lanes or important areas for fishing, shellfish harvesting, or boating. *See* 81 Fed. Reg. 24754.

Possible Indirect Effects at Dredging Sites

Beyond effects at the disposal site, it can also be argued that a site designation would result in indirect effects at locations where dredging will occur. This argument posits that by providing a way for dredged material to be managed, a disposal site designation enables dredging to take place and, therefore, causes indirect effects at dredging sites. After considering this argument, however, EPA concludes that effects at dredging sites would neither be significant nor be the result of any EPA site designations. Any adverse dredging effects would be insignificant because dredging is carefully regulated (*e.g.*, dredging proposals are subject to federal, state and possibly local regulatory review, and the federal government only allows dredging in Long Island Sound during certain months of the year). Moreover, such dredging would be expected to benefit public coastal uses by improving navigational safety and facilitating marine commerce and recreation, and military activities.

Furthermore, effects at dredging sites are not *caused* by site designations. The need for dredging exists regardless of whether a disposal site is designated. Moreover, disposal site designations do not authorize dredging activities. In addition, even without designation of the ELDS (or the NBDS or CSDS), dredging could still occur because a substantial amount of the dredged material could potentially be managed in ways other than placement at a designated site. Of course, this would depend on the quality and quantity of dredged material at issue and the availability of alternative management methods. For example, material could still potentially be placed at open-water disposal sites *designated* by EPA outside of the eastern Sound or at sites *selected* by the USACE. *See* 33 U.S.C. § 1413(b). Material could also be handled using any practicable alternatives to open-water disposal that may be available (*e.g.*, dredged sand could be used for beach nourishment). *See also* EPA’s April 2016 Proposed Rule, 81 Fed. Reg. 24748 - 24752; EPA’s April 2016 DSEIS, §§ 3.4.2.3 and 3.4.2.5.

Possible Indirect Effects along the Routes Used to Convey Dredged Material to Disposal Sites

Finally, designating the ELDS (or the NBDS or CSDS) could also indirectly affect the coastal zones of Connecticut, New York and/or Rhode Island as a result of barges travelling from dredging locations to the disposal site (or sites). EPA does not, however, consider any such barge trip effects to be significant. Conditions are in place that will prevent significant adverse effects. Barge and navigation technology ensures that sediments are placed only at the intended disposal

sites. The regulations also preclude disposal trips during threatening sea conditions. *See* 81 Fed. Reg. 24757, 24760; 40 C.F.R. § 228.15(b)(4)(vi)(I). Moreover, any environmental effects from vessel trips might be similar or worse if no disposal sites are designated in the eastern Sound because similar or even longer trips might be needed to take the material to USACE-selected disposal sites in the region, beneficial reuse sites in the region, or more distant disposal sites outside of the region. In addition, if dredging projects had to be cancelled due to the lack of a designated open-water disposal site, sediment build-up in the channels and harbors of the eastern region of Long Island Sound would harm coastal uses and result in navigational hazards that could cause vessel accidents that themselves would harm the environment as well as public safety.

In sum, designating the ELDS (or NBDS or CSDS) would have no direct effects on the coastal zones of New York, Connecticut or Rhode Island. A designation could, however, have indirect effects on coastal resources and uses at the disposal site(s), when a designation is considered together with reasonably foreseeable future authorizations to place dredged material at the designated site. *See* 15 C.F.R. § 930.11(g). These indirect effects would not, however, be significant. In addition, a site designation would not cause indirect effects at local dredging sites, but if the designation was regarded to cause such indirect effects, those effects would be indeterminate and insignificant. Finally, the site designation could have indirect effects along the navigational routes to the disposal sites but these effects would be insignificant.

3. *Connecticut's Coastal Zone*

The ELDS delineated in EPA's April 2016 Proposed Rule is located in Connecticut state waters, but for a very small area making up the far southeastern corner of the site which extends into New York waters. A number of public comments on the Proposed Rule urged EPA to shift the eastern boundary of the proposed ELDS westward to avoid the ship channel into the Thames River. EPA concludes that this change would not significantly reduce the capacity of the site or otherwise significantly affect it. As a result, EPA is currently planning to make this change to the ELDS boundary so that the site would be entirely within Connecticut waters.

The NBDS alternative also lies entirely in Connecticut waters. Therefore, indirect effects at the disposal sites from designating the ELDS and/or the NBDS would occur entirely in Connecticut waters and Connecticut's coastal zone. The CSDS is approximately 83 percent in Connecticut waters and 17 percent in New York waters. Therefore, indirect effects at the disposal site from designating the CSDS would occur primarily in Connecticut's waters and coastal zone, but could also extend to New York's waters and coastal zone. Moreover, because the CSDS is a dispersive site, the indirect effects of placing dredged material at this site would likely be more widespread and could have indirect effects on the waters and coastal zones of both states, though the prevailing westward currents would still tend to keep any effects in Connecticut's coastal zone. As discussed above, however, EPA does not expect significant indirect effects at the disposal sites.

In addition, insignificant indirect effects on Connecticut's coastal zone would be caused by

dredging at sites located in Connecticut's coastal waters, and by barges travelling to the disposal sites through waters in Connecticut's coastal zone. At the same time, not going forward with a site designation would likely have greater adverse effects on uses of Connecticut's coastal zone by allowing a buildup of sediment that could impact navigational safety, marine commerce and recreation, and military activities.

EPA will discuss the consistency of the proposed action (and alternatives to it) with the specific policies of CT's CMP farther below.

4. *Rhode Island's Coastal Zone*

Designation of the ELDS (and/or the NBDS or CSDS) is not expected to have direct or indirect effects on Rhode Island's coastal zone. All of these sites are outside Rhode Island's coastal zone and use of the sites would not be expected to have any effects on Rhode Island waters. Due to the availability of dredged material disposal sites in Rhode Island, dredged material from Rhode Island waters would likely be taken to these Rhode Island sites and would not likely be taken to any site in the eastern region of Long Island Sound. As a result, designating one or more of these sites would also not be likely to have any indirect effects either at dredging sites within Rhode Island or along marine transit routes from Rhode Island to the disposal sites. In addition, designation of the ELDS (or the NBDS or CSDS) would reduce the likelihood that dredging proponents in eastern Long Island Sound would need to use the previously designated Rhode Island Sound Disposal Site (RISDS). This will preserve capacity at that site for the potential use of dredging projects in Rhode Island and southeastern Massachusetts, as originally planned when the site was designated, and would avoid barges hauling dredged material long distances from Long Island Sound through Rhode Island waters on their way to disposal sites off the coast of Rhode Island.

EPA will provide a federal consistency determination to the Rhode Island Coastal Resources Management Council (RI CRMC), which administers the state's Coastal Management Program.

5. *New York's Coastal Zone*

As discussed above, EPA intends to shift the boundary of the proposed ELDS to avoid the shipping channel, which would move it entirely outside of New York waters. Although the site would still be near New York waters, 81 Fed. Reg. 24751-24752, scientific analysis supporting the proposed site designation, and discussed in EPA's April 2016 Draft DEIS, indicates that the site would retain material placed there and that any temporary perturbations in water quality during disposal events would remain within the site boundaries. *See, e.g.*, 81 Fed. Reg. 24751, 24754-24755. Thus, these effects, if any, would occur only in Connecticut's coastal zone. Even the possibility of effects would be limited to October through April due to the time-of-year restrictions that preclude dredging during the other months in order to avoid possible effects on marine organisms. 81 Fed. Reg. 24751-24752, 24756. In addition, based on the scientific information collected for the site designation studies and the USACE PEIS, and due to the restrictions on the quality of material that may be placed at designated dredged material disposal

sites, any potential adverse impacts to fish, lobsters or other organisms residing in, or transiting, the sites would only be short-term, limited effects. *See, e.g.,* 81 Fed. Reg. 24756; Final PEIS, Chapter 5.

The NBDS also lies entirely outside of New York's coastal zone. For this site, EPA again found that any temporary perturbations in water quality during disposal events would remain within the site boundaries. *See* 81 Fed. Reg. 24754. With regard to the ultimate fate of sediment placed on the seafloor, part of the NBDS is a containment site, and part of the site is dispersive. Material placed in the containment area would remain there, but material placed in the dispersive area would likely be removed from the site by bottom currents. This is a key reason that EPA decided not to propose the designation of the NBDS at this time. If EPA decided to designate the NBDS, it would consider excluding the dispersive area. In that case, use of the site would not affect New York's coastal zone. If the NBDS containment area alone would not provide sufficient disposal capacity, EPA could either designate it together with part or all of the ELDS, or EPA could also designate the dispersive area of the site, but include restrictions that would limit the quality of the material that could be placed in the dispersive area. For example, EPA could impose a site use restriction limiting material placed in the dispersive area to sand that had been found suitable for open-water disposal. *See* 81 Fed. Reg. 24755-24756. With either approach, EPA would not expect such a designation to significantly affect New York's coastal zone.

Finally, turning to the CSDS, 17 percent of the site is located in New York waters, while 83 percent is in Connecticut's waters, and the entire site is dispersive. 81 Fed. Reg. 24751-24752, 24755. EPA is not proposing to designate this site, but if it was designated, the designation would potentially have indirect effects on New York's coastal zone because dredged material placed at the site could travel through the water column and land on the seafloor in New York waters, and because material would be dispersed (primarily to the west) by bottom currents and some could possibly end up in New York waters. These effects would not be expected to have any significance, however, because strict limitations on the type of material that could be placed at the site would be instituted. *See* 81 Fed. Reg. 24751, 24755-24756. The CSDS has been managed in this manner in the past and monitoring has not revealed any adverse environmental effects from use of the site. *See* 81 Fed. Reg. 24751, 24755-24756. Thus, while material placed at this site could possibly end up in New York waters and, thus, affect New York's coastal zone, no significant effects would be expected.

If any of the three alternative sites were designated, then dredging projects in New York waters might utilize one of the sites for materials management. As with dredging sites in Connecticut's coastal zone, EPA does not expect a site designation to result in significant indirect effects to uses and/or resources of New York's coastal zone at New York dredging sites. Dredging is carefully regulated by federal, state and local authorities to prevent adverse environmental effects. Moreover, there could be even more substantial adverse effects on New York's coastal uses and resources if failure to designate an open-water disposal site caused needed dredging to be postponed or cancelled. Failing to conduct needed dredging could adversely affect New York's coastal zone by compromising navigational safety and impeding vessel access to marinas, harbors and navigational channels in New York waters.

Finally, EPA does not expect designation of any of the alternative sites to have indirect effects of any significance on New York's coastal uses and resources as a result of barges travelling through New York waters to take dredged material to the disposal sites. Such barge traffic can be safely managed, *see* 81 Fed. Reg. 24757, and the above-discussed disposal site restrictions will ensure that barge trips will not be undertaken during severe sea conditions that might threaten an accident. *See* 81 Fed. Reg. 24760; 40 C.F.R. § 228.15(b)(4)(J). Moreover, barge trips to the disposal site will be minimized by the requirement that material can only be disposed of at the disposal sites when there is no practicable alternative available to open-water disposal, and based on the time-of-year restrictions that preclude dredging during the late spring and summer months. The latter restrictions will also, in effect, preclude dredged material barge trips during the busiest recreational boating and tourism months of the year. At the same time, because managing dredged material with methods other than open-water disposal also typically involves barging the material to those alternative sites, designating the ELDS is unlikely to result in a significant overall increase in barge trips in New York's coastal zone as compared to not designating a disposal site.

6. *EPA Will Submit CZMA Consistency Determinations to Connecticut, New York, and Rhode Island*

Because the proposed designation of the ELDS would have indirect effects on coastal uses and resources of Connecticut (and possibly New York and Rhode Island), albeit insignificant effects, EPA is submitting this CZMA consistency determinations to CT DEEP. (EPA is also submitting a consistency determination to NY DOS and RI CRMC.) *See* 15 C.F.R. § 930.155. Despite EPA's conclusion that any effects from the proposed action will be insignificant, it still appears appropriate for EPA to provide this determination under NOAA regulations because EPA does not have an agreement with CT DEEP to treat the proposed action as having *de minimis* effects. *See* 15 C.F.R. §§ 930.33(a)(3) and 930.35(a)(3) (negative declaration is submitted when it is determined that there will be *no* effects).

V. **Pre-Consistency Determination Consultation Between EPA and CT DEEP**

EPA has consulted and coordinated extensively with CT DEEP (and others) in connection with dredged material management in Long Island Sound, including the designation and use of the CLDS and WLDS dredged material sites. The CZMA consistency process for the original designations of the CLDS and WLDS involved a lengthy and detailed negotiation over the site designation restrictions. There was also substantial interaction in the NEPA process for the site designations. As discussed in the NEPA documents for the CLDS and WLDS designations, EPA decided to address the eastern region of Long Island Sound in a subsequent decision-making process. *See* 70 Fed. Reg. 32509 ("In March 2002, ... EPA published an Environmental News Notice announcing its intent to modify the ZSF and the scope of the EIS in order to assess the need for open-water disposal sites in Long Island Sound in two phases, with the first EIS to address the central and western regions of the Sound and a later Supplemental EIS to address the eastern region of the Sound.").

Since designation of the disposal sites in 2005, EPA has continued working with CT DEEP and other federal and state agencies on numerous issues related to the management of dredged material from Long Island Sound. This has included participation on the RDT and playing a consultative role in the USACE's development of the DMMP. EPA and CT DEEP personnel have had numerous informal discussions and participated in a number of meetings to discuss issues related to the management of dredged material in the Sound, including the DMMP and the related amendments to the site designation regulations.

Directly related to the current CZMA process, EPA sent CT DEEP an early coordination letter on December 22, 2015, requesting certain "guidance and assistance" consistent with 15 C.F.R. §930.34(d). *See* Letter from Kenneth Moraff, EPA, to Commissioner Robert Klee, CT DEEP (December 22, 2015). Noting that EPA was, among other things, considering designating a dredged material disposal site in the eastern region of Long Island Sound, EPA requested that CT DEEP provide a copy of, or references to, Connecticut's current, up-to-date CMP. EPA also requested that CT DEEP "identify any enforceable policies [of its coastal zone management program] applicable to the proposed activit[ies] ...," and provide its "views and assistance" regarding "the means for determining that the proposed activity will be consistent to the maximum extent practicable with the enforceable policies of ... [your] management program." 15 C.F.R. §930.34(d).

On January 15, 2016, CT DEEP sent a letter to EPA providing the requested guidance and references to the policies from Connecticut's CMP that CT DEEP regards to be applicable to EPA's proposed action. *See* Letter from Brian P. Thompson, CT DEEP, to Kenneth Moraff, EPA (January 5, 2016).

In its letter, CT DEEP states as follows:

While it is important that consistency with all enforceable policies be considered, EPA should give particular attention to the policies in the following sections of this document as most relevant to the proposed actions:

- Developed Shorefront (page 10)
- Coastal Waters and Estuarine Embayments (page 10)
- Intertidal Flats (page 11)
- Shellfish Concentration Areas (page 12)
- Tidal Wetlands (page 13)
- General Development (page 14)
- Dredging and Navigation (page 18)
- Ports and Harbors (page 22).

Please note that there have been some program changes since the publication of the aforementioned guidance document, however in general they do not appear to be relevant to the proposed actions. The only potentially applicable changes are

two minor amendments in Connecticut General Statutes Section 22a-361(e)(1) and (2) pertaining to beneficial use of dredged material.

EPA's evaluation of its proposed action with these policies of Connecticut's CMP is set forth below.

VI. EPA's Consistency Determination

NOAA's CZMA regulations indicate that a federal agency consistency determination:

... shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The statement must be based upon an evaluation of the relevant enforceable policies of the management program. A description of this evaluation shall be included in the consistency determination. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied.

15 C.F.R. § 930.39(a). This consistency determination satisfies these requirements. It includes a brief statement that the proposed activity will be consistent to the maximum extent practicable with the enforceable policies of the management program. This statement is based upon EPA's evaluation of the relevant enforceable policies of the State of Connecticut's CMP, and this evaluation, along with a detailed description of the proposed activity and its coastal effects, is included herein. Furthermore, in support of this consistency determination, data and information has been provided commensurate to the expected coastal effects of the activity.

EPA Evaluation of Specific Policies from Connecticut's LISCMP:

There is a need for periodic dredging of the rivers, harbors, marinas and other aquatic resource areas in and around the waters of Long Island Sound. At the same time, such dredging, and management of the sediments collected from such dredging, must be regulated in an environmentally sound way that protects the natural resources of Long Island Sound even as it provides for safe navigation for commerce, recreation and other public purposes. EPA and CT DEEP both understand that there is a careful balance that must be struck, and EPA's interactions with CT DEEP have played an important role in helping to shape EPA's environmentally protective regulations.

EPA has determined that its proposed site designation, including the applicable site use restrictions, will be appropriately protective of the environment while also properly allowing needed dredging to be carried out. In EPA's view, designation of the ELDS (and/or the NBDS or CSDS) would provide an appropriate site for placement of suitable material for which there are no practicable alternatives. By creating restrictions on the use of these sites, including, among other things, creating the RDT process and adopting standards to help direct appropriate material to alternative sediment management options, such as beach nourishment, EPA concludes that the open-water disposal of dredged material in the waters of Long Island Sound will be reduced or eliminated to the greatest extent practicable. EPA also determines that designating the ELDS (and/or the NBDS or CSDS) would be fully consistent with the CT CMP.

1. Policy 26: Developed Shorefront (p. 10)

CT DEEP's January 15, 2016, letter directs EPA to consider, in particular, Connecticut CMP's policies for protecting the resources and uses of the "developed shoreline" as discussed in the CT DEEP's "Reference Guide to Coastal Policies and Definitions" (the CT Reference Guide). The Reference Guide, p. 10, states as follows:

Developed Shorefront

26. To promote, through existing state and local planning, development, promotional and regulatory programs, the use of existing developed shorefront areas for marine-related uses, including but not limited to commercial and recreational fishing, boating and other water-dependent commercial, industrial and recreational uses. CGS Section 22a-92(b)(2)(G).

Neither the ELDS nor the NBDS or CSDS are located along the shorefront in Connecticut's coastal zone within Long Island Sound. Rather, both sites are a number of miles offshore. Thus, use of any of these sites would not directly affect Connecticut's developed shorefront. Moreover, the indirect effects of the site designations – from the placement of suitable dredged material at the sites – will not adversely affect water-dependent uses of the disposal site areas. Any environmental effects on sediment, water quality, marine organisms or boating from disposal at the sites will be limited in nature, short-term and confined to the area of the site. To the extent that EPA designated a dispersive site (i.e., the CSDS or the dispersive portion of the NBDS) so that material placed at the site might not remain there, restrictions on the quality of the material that can be placed at such a site would prevent off-site adverse impacts of any significance.

If there is any effect on the developed shorefront from EPA's proposed action, that effect will be positive. Designating the ELDS (or one of the alternative sites as discussed above) would provide an environmentally sound location to place suitable dredged material for which there is no practicable alternative management method available. This would likely facilitate a certain amount of needed dredging that would otherwise be delayed or prevented due to the lack of an appropriate way to manage the material. This, in turn, would help promote water-dependent uses

of the developed shorefront, such as commercial and recreational boating and fishing, by improving navigational channels and mooring and docking locations.

2. Policies 22, 23, 24 and 25: Coastal Waters & Estuarine Embayments (p. 10a)

CT DEEP's January 15, 2016, letter directs EPA to consider the Connecticut CMP's policies for protecting the resources and uses of coastal waters and estuarine embayments, as discussed in the CT Reference Guide, p. 10. These policies – specifically, Policies 22, 23, 24 and 25, based on Connecticut General Statutes (CGS) Sections 22a-92(a)(2), 22a-422, 22a-92(c)(2)(A), and 22a-426(a) – address the protection of various aspects of these coastal resources and uses.

Policy 22 is directed generally at the control of water pollution in order to protect and promote the health of the public and the environment and the beneficial use of the state's waters. EPA's proposed action is fully consistent with this policy. First, EPA's proposed site designation does not authorize any dredged material disposal. Designation only makes the site available as a possible option for managing dredged sediments. Separate and case-specific review will be conducted and authorization by USACE is required for any proposal to place dredged material at a designated site. *See* 33 U.S.C. § 1413(a). Second, such material must satisfy the stringent sediment quality criteria of EPA's MPRSA regulations before it can be approved for open-water disposal. *See* 40 C.F.R. Part 227, Subpart B. Third, EPA's proposed site use restrictions for the ELDS expressly bar placement at the site of dredged material that fails to satisfy the sediment quality criteria of the regulations. *See* 40 C.F.R. Part 227, Subpart B. Fourth, the proposed site use restrictions urge regulatory authorities at all levels to pursue efforts to control sediment and pollutant loadings, which is intended to reduce both the need for dredging and the level of contamination present in dredged sediments. Fifth, the standards and procedures in the site use restrictions create the RDT project review process, which should foster the development and utilization of alternatives to open-water disposal in Long Island Sound whenever practicable. Finally, data shows that the environmental effects from dredged material disposal at the disposal sites would be short-term, temporary effects limited to the area of the disposal sites. This is so both within the water column and on the seafloor. To the extent that EPA designated a dispersive site (i.e., the CSDS or the dispersive portion of the NBDS) so that material placed at the site might not remain there, restrictions on the quality of the material that can be placed at such a site would prevent off-site adverse impacts of any significance.

Policy 23 calls for "... manage[ment of] estuarine embayments so as to insure that coastal uses proceed in a manner that assures sustained biological productivity, the maintenance of healthy marine populations and the maintenance of essential patterns of circulation, drainage and basin configuration." EPA's proposed action is fully consistent with this policy. First of all, the proposed action will not adversely affect estuarine embayments because none of the sites under primary consideration – the ELDS, the NBDS or that CSDS – are located in an estuarine embayment. They are all out in the open waters of Long Island Sound. Second, data shows that the environmental effects of placing dredged material at the disposal sites would be limited to temporary effects within the disposal site boundaries. To the extent that EPA designated a dispersive site (i.e., the CSDS or the dispersive portion of the NBDS) so that material placed at

the site might not remain there, restrictions on the quality of the material that can be placed at such a site would prevent off-site adverse impacts of any significance. Third, only suitable material for which there is no practicable alternative management method available can be placed at a designated site. Fourth, EPA's proposed site use restrictions would add procedures and standards to promote the identification of appropriate beneficial use alternatives for dredged material. As a result, placement of dredged material at disposal sites in Long Island Sound will be minimized to the extent practicable. Therefore, all of these actions should combine to facilitate needed dredging while ensuring the environmentally sound management of dredged material and the reduction or elimination of dredged material disposal in the waters of Long Island Sound wherever practicable. Thus, the proposed action will help to insure that coastal uses proceed in a manner that assures sustained biological productivity and maintenance of healthy populations of marine organisms. Furthermore, by facilitating needed dredging activities, EPA's proposed action will also help to maintain essential patterns of circulation, drainage and basin configuration. Again, proposals for actual dredging and dredged material disposal are not governed by EPA's proposed disposal site designation and would, instead, be subject to separate, case-by-case regulatory review.

Policy 24 calls for actions "[t]o protect, enhance and allow natural restoration of eelgrass flats except in special limited cases, notably shellfish management, where the benefits accrued through alteration of the flat may outweigh the long-term benefits to marine biota, waterfowl, and commercial and recreational finfisheries." This policy focuses on preserving and restoring eelgrass flats. EPA's proposed action is fully consistent with this policy. There are no eelgrass flats in the area of any of the primary disposal site alternatives, and the effects of any placement of material at the sites would be limited to the immediate area of the sites. To the extent that EPA designated a dispersive site (i.e., the CSDS or the dispersive portion of the NBDS), restrictions on the quality of the material that could be placed at such a site would prevent off-site adverse impacts of any significance. Moreover, proposals to place material at a designated site would be subject to separate case-specific regulatory review. Furthermore, to the extent that eelgrass beds might be located at a possible dredging site, proposals to dredge in such an area would be subject to separate, site-specific regulatory review to prevent adverse environmental effects.

Policy 25 calls for the state to develop water quality standards to protect public health and the environment and to promote present and future beneficial uses of the state's waters, including for economic development, water supply, recreation, the propagation of fish, aquatic life and wildlife, business and other legitimate uses of the waters. Connecticut has developed such state water quality standards and they will be used in separate regulatory reviews to ensure the protection of the quality of Connecticut's waters and public health, while also promoting the beneficial use of the state's waters. Connecticut water quality standards will be applied through the CWA § 401, 33 U.S.C. § 1341, water quality certification program to support (or make) decisions about whether to authorize dredging in Connecticut waters as well as to decisions about whether to authorize placement of dredged material at a designated site. The data in the record also shows that water quality perturbations from dredged material disposal at the sites would be temporary and would not extend beyond the site boundaries. *See* 70 Fed. Reg. 32503. To the extent that EPA designated a dispersive site (i.e., the CSDS or the dispersive portion of

the NBDS) so that material placed at the site might not remain there, restrictions on the quality of the material that can be placed at such a site would prevent off-site adverse impacts of any significance. Application of Connecticut's water quality standards would also help to ensure that result.

3. Policies 29, 30, 31, 32, and 33: Intertidal Flats (p. 11)

CT DEEP's January 15, 2016, letter directs EPA to consider, in particular, the Connecticut CMP's policies for protecting the resources and uses of intertidal flats, as discussed in the CT Reference Guide, p. 11. These policies – specifically, Policies 29, 30, 31, 32 and 33, based on CGS Sections 22a-92(b)(2)(D), 22a-92(c)(1)(K) – are designed to protect the environmental resources and functions, as well as beneficial uses, of intertidal flats.

EPA's proposed action will be fully consistent with these policies. To the extent that EPA's proposed action would have indirect effects at the ELDS or other primary site alternatives, no effects on intertidal flats would result because the sites are well outside of any intertidal flats. To the extent that EPA's proposed action could be viewed to have any indirect effects on dredging sites by facilitating dredging as a result of providing a disposal site, then intertidal flats could be affected by any dredging in such areas, but, as stated previously, any dredging proposal will be subject to separate, case-specific regulatory reviews by federal, state and possibly local authorities. Any such authorization will not only be subject to environmental and public benefit standards under other laws, such as the Rivers and Harbors Act of 1899 (RHA) and CWA § 401, as discussed above, but they will be subject to review under Connecticut's CMP in accordance with the CZMA.

Furthermore, while EPA's proposed regulatory amendments are designed to reduce or eliminate to the greatest extent practicable the disposal of dredged material into the waters of Long Island Sound, in part by helping to promote alternative dredged material management methods, such as beach nourishment or dune restoration, EPA's proposed action does not, itself, authorize any such uses of dredged material. Therefore, EPA's proposed action will have no effect on intertidal flats resulting from them being filled or covered by dredged material. Any proposal to place dredged material into or on an intertidal flat area for a beneficial use of some kind would be subject to later case-specific regulatory review that would control any negative effects.

4. Policies 38, 39, 40 and 41: Shellfish Concentration Areas (p. 12)

CT DEEP's January 15, 2016, letter directs EPA to consider, in particular, the Connecticut CMP's policies for protecting the resources and uses of shellfish concentration areas, as discussed in the CT Reference Guide, p. 12. These policies – specifically, Policies 38, 39, 40, and 41, based on CGS Sections 22a-92(c)(1)(I), 19a-98(a), 19a-96 and 19a-101 – are designed to protect these resources for both their natural and economic benefits. These policies also are related to both how the resources are managed by regulatory authorities as well as how authorities regulate activities that might affect these resources.

Policy 38 calls for actions that will enhance the health and productivity of shellfish areas to enhance economic and recreational shellfishing and to preserve these resources for use by future generations. EPA's proposed action will be fully consistent with this policy. Neither the ELDS nor the NBDS or CSDS are located in shellfish concentration areas. While there may be shellfish living on the bottom at the disposal sites, these "... disposal sites do not encompass any especially important, sensitive, or limited habitat for the Sound's fish and shellfish" 70 Fed. Reg. 32507. Data shows that environmental effects on the seafloor from the placement of dredged material at the sites – such effects could include burying benthic organisms and habitat under the newly placed sediments – are temporary and limited to the disposal site. Moreover, dredged material will only be authorized for placement at the sites when the material satisfies the protective sediment quality criteria of EPA's regulations at 40 C.F.R. Part 227 and there is no practicable alternative method of sediment management available. In addition, the use of "dredging windows" to restrict dredging and dredged material disposal to certain times of year, will limit any impacts to only certain times of year. *See* 70 Fed. Reg. 32503 – 32507.

With regard to effects on shellfish resources at dredging sites, such effects cannot be attributed to EPA's proposed action because EPA is not authorizing any particular dredging projects. To the extent that EPA's proposed action can be considered to result in indirect effects at dredging sites by facilitating dredging projects as a result of providing open-water disposal sites, any proposed dredging project still requires prior authorization under a separate case-specific regulatory review. Moreover, such review will require, among other things, consistency with the CT CMP, which will ensure proper protection of shellfish resources.

Furthermore, while EPA's proposed regulatory amendments are designed to reduce or eliminate to the greatest extent practicable the disposal of dredged material into the waters of Long Island Sound, in part by helping to promote alternative dredged material management methods, such as beach nourishment or dune restoration, EPA's proposed action does not, itself, authorize any such uses of dredged material. Therefore, EPA's proposed action will have no effect on nearshore shellfish concentration areas as a result of them being filled or covered by dredged material. As with dredging proposals, any proposal to place dredged material into or on a shellfish concentration area as a management method would be subject to later case-specific regulatory review that would control any negative effects.

Policies 39, 40 and 41, are not relevant to EPA's proposed action, as they deal with shellfish management by the Connecticut Department of Agriculture, Bureau of Aquaculture and Laboratory Services.

5. Policies 43, 44, 45, 46, 47 & 48: Tidal Wetlands (p. 13)

CT DEEP's January 15, 2016, letter directs EPA to consider, in particular, the Connecticut CMP's policies for protecting the resources and uses of tidal wetlands, as discussed in the CT Reference Guide, p. 13. These policies – specifically, Policies 43, 44, 45, 46, 47 and 48, based on CGS Sections 22a-92(b)(2)(E), 22a-28, 22a-92(a)(2), 22a-92(c)(1)(B), 22a-33 – are designed to protect these resources for both their natural and economic benefits.

Policies 43, 44, 45, 46, 47 and 48 collectively call for actions to preserve, restore and promote the creation of intertidal wetlands. More specifically, Policy 45 urges actions that, “[w]here feasible and environmentally acceptable, ... [will] encourage the creation of wetlands for the purpose of shellfish and finfish management, habitat creation and dredge spoil disposal,” while Policy 46 decries the loss of tidal wetlands to activities such as unregulated dredging, and declares the state’s policy to be in opposition to such destruction.

EPA’s proposed action will be fully consistent with all of these policies. The analysis with regard to these policies is much the same as that for Policies 29-33 pertaining to intertidal flats. To the extent that EPA’s proposed action will have indirect effects on Connecticut’s coastal resources and their uses due to the placement of dredged material at the ELDS (or the NBDS or CSDS), it would not result in any effects on tidal wetlands because the sites are well offshore. In addition, to the extent that EPA’s proposed action could be viewed potentially to have indirect effects on dredging sites by facilitating dredging, then tidal wetlands could conceivably be affected if dredging was authorized in such areas. As stated previously, however, any dredging proposal would be subject to separate, case-specific regulatory reviews by federal, state and possibly local authorities. Any such authorization would not only be subject to specific environmental and public benefit standards under other laws such as the Rivers and Harbors Act of 1899 (RHA) and CWA §§ 401 and 404, as discussed above, but they would be subject to review under Connecticut’s CMP, including Policy 46 restricting the destruction of tidal wetlands from dredging and other activities, in accordance with the CZMA.

Furthermore, EPA’s proposed regulatory amendments are designed to reduce or eliminate to the greatest extent practicable the disposal of dredged material into the waters of Long Island Sound, in part by helping to promote alternative dredged material management methods, such as beach nourishment or dune restoration. Therefore, EPA’s proposed action may tend to promote or facilitate the use of suitable dredged material for any appropriate tidal wetland restoration efforts, as supported by Policy 45. EPA’s proposed action, however, does not, itself, authorize any such uses of dredged material. Any proposal to place dredged material into or on a tidal wetland would be subject to a later, case-specific regulatory review that would control to determine the appropriateness of any such action. This regulatory review would include a review of whether the proposed action is consistent with Connecticut’s CMP, including Policy 45.

6. Policies 49, 50 and 51: General Development (pp. 14-15)

CT DEEP’s January 15, 2016, letter directs EPA to consider, in particular, the Connecticut CMP’s policies concerning “General Development,” as discussed in the CT Reference Guide, pp. 14-15. These policies – specifically, Policies 49, 50 and 51, based on CGS Sections 22a-92(a)(1), 22a-92(a)(4), 32-23(c) – are designed to protect land and water resources of the coastal zone for both their natural and economic benefits.

Policies 49, 50 and 51 collectively call for actions to preserve, protect and develop land and water resources of the coastal zone in ways that protect and preserve these environmental

resources, and the beneficial uses of these resources, for economic, recreational and environmental purposes. These policies seek to balance beneficial economic uses of these natural resources with appropriate environmental protection. More specifically, Policy 50 calls for balancing competing uses of “shorelands adjacent to marine and tidal waters” so that uses are favored that minimize adverse effects on natural resources while also providing for “long-term and stable economic benefits.” In addition, Policy 51 addresses many aspects of the state’s policy of supporting economic development and growth, even as environmental protection is also supported.

EPA’s proposed action will be fully consistent with these policies. EPA’s action will not cause more than temporary, insignificant adverse (indirect) environmental effects at the ELDS (or other site designation alternatives). EPA action also will not have any (indirect) effects outside of the ELDS or containment portion of the NBDS, or any significant (indirect) effects outside the CSDS or the dispersive portion of the NBDS. As explained above, only suitable dredged materials for which no practicable alternative management method is available will be allowed to be placed at the sites, and even tighter limitations would be placed at any dispersive site that was designated. Moreover, placement of material at the ELDS (or other sites) will not have adverse economic effects because it will not have any significant adverse effects on economic uses of coastal resources at the site, such as fishing, shell harvesting, commercial or recreational navigation, or any other beneficial economic activity. Any proposal to place material at a designated site will be subject to separate, case-specific regulatory reviews to ensure this result.

Furthermore, EPA’s action will also be fully consistent with these policies to the extent that it could be viewed to result in any indirect effects at sites where dredging will occur. By facilitating needed dredging to ensure safe navigation and provide adequate mooring and docking areas, as well as by promoting beneficial uses of dredged material, such as beach nourishment, EPA’s proposed action will support environmentally sound economic activities in Connecticut’s coastal zone.

7. Policies 77, 78, 79, 80, 81 and 82: Dredging and Navigation (pp. 18-19)

CT DEEP’s January 15, 2016, letter directs EPA to consider, in particular, the Connecticut CMP’s policies concerning “Dredging and Navigation,” as discussed in the CT Reference Guide, pp. 18-19. These policies – specifically, Policies 77, 78, 79, 80, 81 and 82, based on CGS Sections 22a-92(c)(1)(C), 22a-92(c)(1)(D), 22a-92(c)(1)(E), 22a-383, 22a-92(a)(2), and 15-1 – are designed to promote necessary dredging for navigational and other purposes, but also to minimize the need for dredging, all while ensuring environmental protection.

These policies from Connecticut’s CMP read as follows:

Dredging & Navigation

77. To encourage, through the state permitting program for dredging activities, the maintenance and enhancement of existing federally maintained navigation

channels, basins and anchorages. CGS Section 22a-92(c)(1)(C).

78. To discourage the dredging of new federally maintained navigation channels, basins and anchorages. CGS Section 22a-92(c)(1)(C).

79. To reduce the need for future dredging by requiring that new or expanded navigation channels, basins and anchorages take advantage of existing or authorized water depths, circulation and siltation patterns and the best available technologies for reducing controllable sedimentation. CGS Section 22a-92(c)(1)(D).

80. To disallow new dredging in tidal wetlands except where no feasible alternative exists and where adverse impacts to coastal resources are minimal. CGS Section 22a-92(c)(1)(E).

81. The commissioner of environmental protection shall regulate the taking and removal of sand, gravel and other materials from lands under tidal and coastal waters with due regard for the prevention or alleviation of shore erosion, the protection of necessary shellfish grounds and finfish habitats, the preservation of necessary wildlife habitats, the development of adjoining uplands, the rights of riparian property owners, the creation and improvement of channels and boat basins, the improvement of coastal and inland navigation for all vessels including small craft for recreational purposes and the improvement, protection or development of uplands bordering upon tidal and coastal waters, with due regard for the rights and interests of all persons concerned. CGS Section 22a-383 as referenced by CGS 22a-92(a)(2).

82. Harbor masters shall have the general care and supervision of the harbors and navigable waterways over which they have jurisdiction, subject to the discretion and control of the commissioner of transportation, and shall be responsible to the commissioner for the safe and efficient operation of such harbor and navigable waterways in accordance with the provisions of this chapter. The commissioner may delegate, any of his powers and duties under this chapter to such harbor masters or to any existing board of harbor commissioners, but shall at all times be vested with responsibility for the overall supervision of the harbors and navigable waterways of the state. CGS Section 15-1.

EPA's proposed action is fully consistent with the above policies. By proposing to designate the ELDS (and/or one or more of the CSDS or NBDS), EPA's action supports needed dredging of federal navigation channels, basins and anchorages consistent with Policy 77. EPA's proposed action will facilitate necessary dredging and also help to reduce or eliminate the placement of dredged material into the waters of Long Island Sound to the extent practicable.

At the same time, EPA's action neither requires, authorizes, nor regulates any particular dredging project. CMP Policies 80-82 pertain to the regulation of dredging and in that sense are not implicated by EPA's site designations. Dredging proposals will be subject to separate case-specific regulatory review, including review under the policies of the Connecticut CMP and a state water quality review under CWA § 401(a)(1). 33 U.S.C. § 1341(a)(1). Moreover, any proposals to place dredged material at locations other than a designated site – for example, on a beach or other upland area – will also be subject to separate, case-specific regulatory review.

Furthermore, the site use restrictions proposed by EPA include provisions to encourage regulatory authorities to continue actions to reduce sediment and contaminant loadings. This is intended to help reduce both the need for dredging and the degree of contamination present in the dredged material. In addition, the site use restrictions apply the RDT review process to individual dredged material disposal projects and are designed to promote the development and use of practicable alternatives to open-water disposal. Thus, EPA's proposed action is entirely consistent with Policies 78 through 82, which are designed to reduce dredging activity to the extent appropriate, and to ensure that dredging proposals receive a balanced review taking into account the various interests and rights that may be at stake (e.g., navigational needs, environmental needs, economic needs, riparian interests, wildlife interests, navigational interests).

8. Policies 100 and 101: Ports and Harbors (p. 22)

CT DEEP's January 15, 2016, letter directs EPA to consider, in particular, the Connecticut CMP's policies concerning "Ports and Harbors," as discussed in the CT Reference Guide, p. 22. These policies – specifically, Policies 100 and 101, based on CGS Sections 22a-92(b)(1)(C) – are designed to promote the development, redevelopment or reuse of urban and commercial fishing ports (Policy 100) and to disallow uses which congest navigational channels or preclude boating support facilities (Policy 101).

EPA's proposed action is fully consistent with Policies 100 and 101. By proposing to designate one or more disposal sites, but also helping to promote methods of dredged material management other than placement at those sites, EPA's proposed action will facilitate necessary dredging even as it helps to reduce or eliminate the placement of dredged material into the waters of Long Island Sound to the extent practicable. This will be entirely consistent with state policy favoring the development of urban and commercial fishing ports, as dredging may be needed to achieve these goals. EPA's action is also entirely consistent with Policy 101, as EPA's proposed action has to do with the approval or disapproval of proposals for uses or facilities in navigational channels, ports, or harbors.

9. Other Policies

CT DEEP's January 15, 2016, letter also indicates that EPA should consider other policies of the Connecticut CMP in addition to the ones specified in the letter, to the extent that such other policies may be relevant. EPA has considered these other policies and determined that its

proposed action will be consistent with all of these policies. From among these policies, a few bear particular mention.

First, Policies 5 and 7 related to Beaches & Dunes are relevant to consider with respect to EPA's action. These policies are discussed in CT's Reference Guide, pp. 7-8, and they provide as follows:

5. To preserve the dynamic form and integrity of natural beach systems in order to provide critical wildlife habitats, a reservoir for sand supply, a buffer for coastal flooding and erosion, and valuable recreational opportunities. CGS Section 22a-92(b)(2)(C).

7. To encourage the restoration and enhancement of disturbed or modified beach systems. CGS Section 22a-92(b)(2)(C).

EPA's proposed fully action is consistent with Policies 5 and 7 because it is intended to promote the use of appropriate dredged material, such as dredged sand, for beach nourishment and/or dune or coastal berm support. *See also* Policies 58 and 59, CT Reference Guide, p. 16 (concerning actions to support state recreational facilities). At the same time, case-specific regulatory review will be required before any material can be applied to such uses. This will ensure that only appropriate material is used in this manner.

Second, Policy 52 relates to Boating and is relevant for consideration with regard to EPA's proposed action. As discussed and presented in the CT's Reference Guide, p. 15, Policy 52 provides the following:

52. To encourage increased recreational boating use of coastal waters, where feasible, by (i) providing additional berthing space in existing harbors, (ii) limiting non-water-dependent land uses that preclude boating support facilities, (iii) increasing state-owned launching facilities, and (iv) providing for new boating facilities in natural harbors, new protected water areas and in areas dredged from dry land. CGS Section 22a-92(b)(1)(G).

EPA's proposed action will be fully consistent with Policy 52 because it will facilitate dredging needed for boating facilities, such as navigation channels, berthing spaces, and launching areas. The ELDS (or other site alternatives) would provide options for the open-water placement of suitable dredged material for which no practicable alternative management methods are available. At the same time, the proposed site use restrictions would promote the use of practicable alternatives to the open-water placement of dredged material.

Third, Policy 116, regarding Intergovernmental Coordination, calls for coordination of the planning and regulatory activities of public agencies "at all levels of government to insure maximum protection of coastal resources while minimizing conflicts and disruption of economic development." CT Reference Guide, p. 25. EPA's proposed action is fully consistent with Policy

116 given that in addition to existing intergovernmental review processes (e.g., under CWA § 401, the ESA, the MSFCA, and the CZMA), it proposes to formalize and enhance the role of the intergovernmental Steering Committee and Regional Dredging Team as spelled out in the proposed site use restrictions.

Finally, Policy 123 pertains to Dredging and Dredged Material Disposal Planning and provides as follows:

123. To initiate in cooperation with the federal government and the continuing legislative committee on state planning and development a long range planning program for the continued maintenance and enhancement of federally maintained navigation facilities in order to effectively and efficiently plan and provide for environmentally sound dredging and disposal of dredged materials. CGS Section 22a-92(c)(1)(C).

CT Reference Guide, p. 26. EPA's proposed action is fully consistent with Policy 123. EPA is proposing to designate one or more dredged material disposal sites in the eastern region of Long Island Sound, consistent with the long-range plan that was spelled out in the NEPA review process and which has over many years been discussed between EPA, CT DEEP, and other regulatory agencies. Furthermore, the site use restrictions proposed by EPA would add standards and procedures to the regulations based on the USACE's Long Island Sound DMMP, which was developed in cooperation with EPA and the states of Connecticut and New York. The DMMP is a long-range planning document assessing predicted dredging needs for the region and projecting how various types of dredged material can be managed in the future. Based on the DMMP, EPA's proposed site designation and site use restrictions are intended to provide needed disposal capacity while also eliminating or reducing the open-water placement of dredged material to the extent practicable. Thus, EPA's proposed action will enable the relevant agencies to "effectively and efficiently plan and provide for environmentally sound dredging and disposal of dredged materials."

10. Connecticut General Statutes

CT DEEP's January 15, 2016, letter also indicates that EPA should consider "two minor amendments in Connecticut General Statutes Section 22a-361(e)(1) and (2) pertaining to beneficial use of dredged material." The Connecticut statutes create a state permitting program to govern any person proposing to "... dredge, ... place any fill, ... or carry out any work incidental thereto or retain or maintain any structure, dredging or fill, in the tidal, coastal or navigable waters of the state waterward of the coastal jurisdiction line" CGS 22a-361(a)(1) and (d). The state law also requires applicants to pay certain fees to the state for processing such permit applications. *See* CGS 22a-361(a)(1), (2) and (3), and (e). The statute authorizes CT DEEP to adopt regulations that:

... establish criteria for granting, denying, limiting, conditioning or modifying permits giving due regard for the impact of regulated activities and their use on the tidal, coastal or navigable waters of the state, adjoining coastal and tidal

resources, tidal wetlands, navigation, recreation, erosion, sedimentation, water quality and circulation, fisheries, shellfisheries, wildlife, flooding and other natural disasters and water-dependent use opportunities as defined in section 22a-93. The regulations may provide for consideration of local, state and federal programs affecting tidal, coastal and navigable waters of the state and the development of the uplands adjacent thereto

CGS 22a-361(c). In addition, CGS 22a-361(e)(1) and (2), referenced in CT DEEP's January 15, 2016, letter, provide that:

(1) ... the commissioner may waive such payment [of fees] for the beneficial or commercial use of sand, gravel, or other material that such person, firm or corporation decontaminates or processes to meet applicable environmental standards for reuse. No fee shall be assessed for (A) the performance of such activities on land which is not owned by the state, (B) the use of sand, gravel or other materials for beach restoration projects, or (C) ultimate disposal of such sand, gravel or other materials which does not result in an economic benefit to any person.

(2) The commissioner may require that any person ... who removes sand, gravel or other material lying waterward of the mean high water mark of the tidal, coastal or navigable waters shall make available such sand, gravel or other material of appropriate grain size and composition to any coastal municipality or to any district established pursuant to chapter 105 or by special act to plan, lay out, acquire, construct, reconstruct, repair, maintain, supervise and manage a flood or erosion control system. Such sand, gravel or other material shall be offered for the purposes of an appropriately authorized beach nourishment or habitat restoration project and shall be available (A) to municipalities for the cost of transporting such sand, gravel or other material, and (B) to districts for a reasonable fee.

Thus, the Connecticut statutes provide certain incentives and other support for managing dredged material with beneficial use methods rather than open-water disposal.

EPA's proposed action is entirely consistent with these statutory provisions, as the proposed site use restrictions also are designed to promote the use of practicable alternatives to open-water disposal of dredged material. For example, the RDT process and the sediment characteristics standards specified in the regulatory amendments will help promote dredged material management using methods other than open-water disposal. *See* Proposed 40 C.F.R. §§ 228.15(b)(4)(C) – (E). Moreover, as explained above, EPA's site designations and site use restrictions would not authorize any particular dredging or dredged material disposal project, they would just provide the ELDS (and/or alternative sites) as potential management options if applicable standards are met and approvals obtained.